86-207

No.

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

MARK C. BLOOME CO.,
Petitioner,

VS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES,
Respondent.
ALANSON SHEPHERD, CHRISTINE SHEPHERD,
CHRYSLER CORPORATION,
Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, AFTER DENIAL OF PETITION FOR HEARING BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

PAUL M. MAHONEY
JONES, MAHONEY & BRAYTON
100 POMONA MALL W., SUITE 506
POMONA, CALIFORNIA 91766
TELEPHONE: (714) 623-2411
Attorneys for Petitioner

Bowne of Los Angeles, Inc., Law Printers (213) 742-6600.

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QUESTIONS PRESENTED

1. Whether or not California Code of Civil Procedure Sections 877.5 and 877.6 which, upon a finding of a good faith settlement by the trial court, bar Petitioner and the other non-settling defendants from pursuing cross-complaints for indemnity filed by them against Co-Defendant CHRYSLER, deny Petitioner and the other non-settling defendants equal protection of the law and/or due process under the United States Constitution because Petitioner and the other non-settling defendants are denied certain benefits of the jury verdict reached in the underlying case, whereas CHRYSLER and Plaintiffs ("SHEPHERDS") are able to benefit from all of the findings of the jury.

2. Whether or not California Code of Civil Procedure Section 877.5 denies Petitioner and the other non-settling defendants equal protection of the law under the United States Constitution because it treats non-settling defendants under a sliding scale agreement different from non-settling defendants under California Code of Civil Procedure Section 877.

3. Whether or not the settlement agreement in this case is collusive as a matter of law and thus a denial of Petitioner's right to a fair trial in violation of the due process clause of the United States Constitution because it allows Co-Defendant CHRYSLER to remain in the case at trial as a defendant and a cross-complainant and because it provides that the judgment received by the SHEPHERDS must be a collectible judgment.

4. Whether or not it is a denial of Petitioner's right to due process and/or equal protection of the law under the United States Constitution to allow Co-Defendant CHRYSLER to remain in the case and pursue its cross-complaint for indemnity even though it has paid no money

in settlement to the SHEPHERDS, while at the same time barring all cross-complaints for indemnity against CHRYSLER.

LIST OF PARTIES

Petitioner[1] herein is one of many defendants in a wrongful death lawsuit filed in the Superior Court of the State of California, County of Los Angeles, East District, entitled *Alanson Shepherd, et al. v. Chrysler Corporation, et al.*, Case No. EAC 31415.

Respondent is the Superior Court of the County of Los Angeles, State of California, and Real Parties In Interest are Plaintiffs, ALANSON and CHRISTINE SHEPHERD, parents of Diane Ree Shepherd (deceased), and Co-Defendant CHRYSLER CORPORATION.

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[1]Petitioner is a corporation which is a wholly owned subsidiary of Petrolane, Incorporated. Petrolane Incorporated is a wholly owned subsidiary of Texas Eastern Corporation. Petitioner has no subsidiaries or affiliates.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
TABLE OF CONTENTS	iv
INDEX TO APPENDICES	vii
TABLE OF AUTHORITIES	viii
OPINION BELOW	1
JURISDICTION	4
RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES	4
STATEMENT OF THE CASE	4
STAGES AT WHICH THE FEDERAL QUESTION WAS RAISED AND PRESERVED	6
ARGUMENT	7
I	
California Code Of Civil Procedures Sections 877.5 And 877.6 Which, Upon A Finding Of A Good Faith Settlement By The Trial Court, Bar Petitioner And The Other Non-Settling Defendants From Pursuing Cross-Complaints For Indemnity Filed By Them Against Co-Defendant Chrysler, Deny Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law And/Or Due Process Under The United States Constitution Because Petitioner And The Other Non-Settling Defendants Are Denied Certain Benefits Of The Jury Verdict Reached In The Underlying Case, Whereas Chrysler And The Shepherds Are Able To Benefit From All Of The Findings Of The Jury	7

TABLE OF CONTENTS

Page

II

California Code Of Civil Procedure Section 877.5 Denies Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law Under The United States Constitution Because It Treats Non-Settling Defendants Under A Sliding Scale Agreement Different From Non-Settling Defendants Under California Code Of Civil Procedure Section 877 13

III

The Settlement Agreement In This Case Is Collusive As A Matter Of Law And Thus A Denial Of Petitioner's Right To A Fair Trial In Violation Of The Due Process Clause Of The United States Constitution Because It Allows Chrysler To Remain In The Case At Trial As A Defendant And A Cross-Complainant And Because It Provides That The Judgment Received By The Shepherds Must Be A Collectible Judgment 16

TABLE OF CONTENTS

Page

A. The Settlement Denies Petitioner Due Process Because CHRYSLER'S Remaining In The Case Allows It To Manipulate The Evidence To The Detriment Of Petitioner And The Other Non-Settling Defendants 16

B. The Settlement Is Collusive Because It Provides For A Collectible Judgment, Thus Injecting Assets And Insurance Of Petitioner And The Other Non-Settling Defendants Into The Case 21

IV

It Is A Denial Of Petitioner's Right To Due Process And/Or Equal Protection Of The Laws Under The United States Constitution To Allow Chrysler To Remain In The Case And Pursue Its Cross-Complaint For Indemnity Even Though It Has Paid No Money In Settlement To The Shepherds, While At The Same Time Barring All Cross-Complaints For Indemnity Against Chrysler..... 23

V

To The Extent That *Tech-bilt v. Woodward Clyde & Associates* Applies To Guarantee Agreements, The Procedure Established Therein Is Unconstitutional And A Denial Of Petitioner's Constitutional Right To Due Process And Equal Protection Of The Laws..... 24

Conclusion..... 24

INDEX TO APPENDICES

Appendix A — Court of Appeal opinion.

Appendix B — Agreement of Settlement and Covenant Not to Execute.

Appendix C — Court order approving settlement.

Appendix D — Face sheet and index of authorities of Petitioner's opposition to Chrysler's motion for good faith settlement.

Appendix E — Face sheet and index of authorities on petition by Petitioner for writ of mandate.

Appendix F — Order denying petition for writ of mandate by California Court of Appeal.

Appendix G — Face sheet and index of petition for hearing by Petitioner to the Supreme Court.

Appendix H — Order granting review by California Supreme Court.

Appendix I — Face sheet and index of petition for hearing by Petitioner to the Supreme Court.

Appendix J — Order denying review by California Supreme Court.

Appendix K — Suit filed by Shepherds plus Doe Amendment.

Appendix L — Chrysler's cross-complaint for indemnity.

Appendix M — Petitioner's cross-complaint for indemnity.

TABLE OF AUTHORITIES CITED

State Cases

Page

American Motorcycle Assn. v. Superior Court, 20 Cal.3d 578, 146 Cal.Rptr. 182, 578 P.2d 899 (1978) 10

Tech-Bilt v. Woodward Clyde & Associates, 38 Cal.3d 488, 213 Cal.Rptr. 256, 698 P.2d 159 (1985) 2, 3, 24

Federal Cases

Barrows v. Jackson, 346 U.S. 249, 97 L.Ed. 1586, 73 S.Ct. 1031 (1953) 10

Eisenstadt v. Baird, 405 U.S. 438, 31 L.Ed.2d 349, 92 S.Ct. 1029 (1972) 14

Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed. 287, 90 S.Ct. 1011 (1970) 17

Lassiter v. Dept. of Social Services, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) 16

Reed v. Reed, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971) 14

Shelley v. Kraemer, 334 U.S. 1, 92 L.Ed. 1161, 68 S.Ct. 836 (1948) 10

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 31 L.Ed.2d 768, 92 S.Ct. 1400 (1972) 14

Constitutions

California Constitution, Article 1, Section 16 ..... 4, 7

United States Constitution, Fourteenth Amendment 4, 7, 10

Table of Authorities Cited

Statutes

	Page
California Code of Civil Procedure, Sec. 877	i, 4, 13
California Code of Civil Procedure, Sec. 877(a)	13, 14, 15
California Code of Civil Procedure, Sec. 877(b)	14, 15
California Code of Civil Procedure, Sec. 877.5	i, 4, 7, 10, 13, 14, 15, 22, 25
California Code of Civil Procedure, Sec. 877.5(a)(2)	22
California Code of Civil Procedure, Sec. 877.5(2)	20
California Code of Civil Procedure, Sec. 877.6	i, 3, 4, 7, 9, 10, 15, 25
United States Code, Title 28, Sec. 1257(3)	4

Other Authorities

Book of Approved Jury Instructions, Instr. No. 12.69	11
Book of Approved Jury Instructions, Instr. No. 12.69.3	11

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MARK C. BLOOME CO., your Petitioner, respectfully prays for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, after denial of petition for hearing by the California Supreme Court.

OPINION BELOW

This Petition for Writ of Certiorari follows the denial by the California Supreme Court of a hearing from an

order by the California Court of Appeal granting Petitioner a Writ of Mandate on technical grounds but denying Petitioner's constitutional challenges to a settlement agreement commonly known as a "Mary Carter Agreement." The Court of Appeal opinion (Appendix A) remanded to the trial court for further hearing the issue of whether to approve under the guidelines of *Tech-Bilt v. Woodward Clyde & Associates,* 38 Cal.3d 488, 231 Cal.Rptr. 256, 698 P.2d 159 (1985), a guarantee or so-called Mary Carter agreement entered into between Plaintiffs-Real Parties in interest ALANSON SHEPHERD and CHRISTINE SHEPHERD (hereinafter referred to as the "SHEPHERDS") and Co-Defendant CHRYSLER CORPORATION (hereinafter referred to as "CHRYSLER").

The Agreement of Settlement and Covenant Not to Execute at issue in this case (Appendix B) provides as follows:

1. CHRYSLER will be released by the SHEPHERDS from any liability for claims;

2. The SHEPHERDS are guaranteed a "collectible judgment" of up to $150,000;

3. Any settlement that the SHEPHERDS make with any other Defendant is subject to the approval of CHRYSLER;

4. If the SHEPHERDS get a final collectible judgment of $150,000 or more, CHRYSLER owes the SHEPHERDS nothing; if the verdict is less than $150,000, CHRYSLER must make up the difference between the amount of the final judgment and $150,000; and if the verdict exceeds $150,000, the SHEPHERDS agree not to execute against CHRYSLER to collect it;

5. Each party will waive costs;

6. The agreement is not final until the Court approves it;

7. CHRYSLER will remain in the case and participate at trial as a Defendant and Cross-Complainant in order that CHRYSLER in its own words, may "protect its interests."

On March 4, 1985, the Honorable Peter Smith, Judge of the Superior Court of the County of Los Angeles, State of California, granted CHRYSLER'S Motion for Good Faith Settlement under Code of Civil Procedure Section 877.6 (Appendix C). Petitioner opposed the request and raised its constitutional objections at that time (Appendix D).

On or about March 7, 1985, Petitioner filed a Petition for Writ of Mandate in the Court of Appeal to reverse the trial court determination of good faith settlement (Appendix E). This was denied on April 22, 1985 (Appendix F).

On or about May 1, 1985, Petitioner filed a Petition for Review with the California Supreme Court (Appendix G), and on June 6, 1985, the California Supreme Court granted Petitioner's Petition for Review and ordered the Court of Appeal to issue an Alternative Writ of Mandate and to schedule the matter for oral argument (Appendix H).

On November 20, 1985 the matter was argued before the Court of Appeal, and on February 21, 1986 the Court of Appeal issued its opinion granting Petitioner's application for writ of mandate and remanded the matter back to the trial court for a hearing to determine whether the settlement agreement comports with the requirements of *Tech-Bilt v. Woodward Clyde & Associates, supra.* However, the Court of Appeal rejected all of Petitioner's

constitutional arguments to Mary Carter agreements in general, and this agreement in particular.

On March 24, 1986, Petitioner filed a Petition for Review with the California Supreme Court (Appendix I), and on June 5, 1986, the Supreme Court denied review (Appendix J).

JURISDICTION

The decision of the Court of Appeal upholding the trial court judgment of which review is sought herein was made and entered on February 21, 1986 (Appendix A) and became final on March 23, 1986. The California Supreme Court denied the Petition for Hearing on June 5, 1986 (Appendix J).

The jurisdiction of the Court is invoked under Title 28, U.S.C. § 1257(3).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

California Code of Civil Procedure, Sections 877, 877.5, 877.6.

California Constitution, Article 1, Section 16.

Constitution of the United States, Fourteenth Amendment.

STATEMENT OF THE CASE

The SHEPHERDS were the parents of Diana Ree Shepherd who was killed in an automobile accident in Los Angeles County, California on June 8, 1979. The accident happened when the 1976 Plymouth Arrow automobile manufactured by CHRYSLER that Diana Ree Shepherd was driving (hereinafter referred to as "Ms. Shepherd's

vehicle") east on a freeway collided with a wheel and tire that had become detached from a 1971 Dodge Charger automobile also manufactured by CHRYSLER (hereinafter referred to as "Hanlon's vehicle") belonging to Co-Defendant James Anthony Hanlon (hereinafter referred to as "Hanlon") who was also driving east on the same freeway. Ms. Shepherd's vehicle overturned when it hit the tire and wheel from Hanlon's vehicle. When bystanders turned Ms. Shepherd's vehicle upright, it burst into flames and she burned to death. The SHEPHERDS filed suit (Appendix K).

Discovery has established that decedent was 25 years old at the time of her death and was the fifth of eight children. She was living apart from her parents and was not contributing any economic support to them. The SHEPHERDS have no claim for loss of income or support and they seek funeral expenses in the approximate amount of $3,000 and general damages for the loss of society and comfort.

Among the defendants in the underlying action are Hanlon who is in default on the SHEPHERDS' complaint and on the cross-complaints for indemnity filed against him and who is uninsured. The SHEPHERDS collected $15,000 under the decedent's uninsured motorist policy. Other defendants are CHRYSLER (on the theory that one or both of the cars involved in the accident were defective), Peat Manufacturing Company (who manufactured the Crager magnesium wheels on the Hanlon vehicle), and numerous other parties who allegedly worked on the Hanlon vehicle prior to the accident, including Petitioner (who allegedly last worked on Hanlon's vehicle a few days before the accident). In addition to being named as a defendant, Petitioner has been served with cross-complaints for indemnity by various defendants and cross-complaints, including CHRYSLER

(Appendix L). Petitioner has filed cross-complaints for indemnity against all parties except the SHEPHERDS (Appendix M).

The SHEPHERDS originally asserted two product liability theories against CHRYSLER: The first was with regard to Hanlon's vehicle by asserting that the left front wheel assembly was in some way defective, allowing the wheel to become detached. The second was with regard to Ms. Shepherd's vehicle and the claim that the vehicle should not have caught fire and was not crash-worthy. The SHEPHERDS asserted against Peat Manufacturing Company a product liability theory that the wheel was defectively manufactured and designed. Against all of the remaining defendants except Hanlon they have alleged each had something to do with mounting, inspection, maintenance and control of Hanlon's vehicle. All defendants have denied liability.

The deposition testimony of both the SHEPHERDS' expert and Petitioner's expert establish that there was a defect in the design and manufacture of Ms. Shepherd's vehicle manufactured by CHRYSLER which caused it to catch fire. If the car had not ignited when set upright, it is likely that Ms. Shepherd would have sustained some injuries, but she would have lived.

STAGES AT WHICH THE FEDERAL QUESTION WAS RAISED AND PRESERVED

Petitioner resisted this settlement on Federal and State Constitutional grounds at every stage of the proceedings, commencing with CHRYSLER'S Motion for Good Faith Settlement, and later on in connection with the Petition for Writ of Mandate and the two Petitions for Review filed with the California Supreme Court.

ARGUMENT

I

California Code Of Civil Procedure Sections 877.5 And 877.6 Which, Upon A Finding Of A Good Faith Settlement By The Trial Court, Bar Petitioner And The Other Non-Settling Defendants From Pursuing Cross-Complaints For Indemnity Filed By Them Against Co-Defendant Chrysler, Deny Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law And/Or Due Process Under The United States Constitution Because Petitioner And The Other Non-Settling Defendants Are Denied Certain Benefits Of The Jury Verdict Reached In The Underlying Case, Whereas Chrysler And The Shepherds Are Able To Benefit From All Of The Findings Of The Jury

The Fourteenth Amendment, Section 1, of the United States Constitution provides in pertinent part that:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 16, of the California Constitution provides in pertinent part:

> "Trial by jury is an inviolate right and shall be secured to all .... In a civil case, a jury may be waived by the consent of the parties expressed or prescribed by statute."

California Code of Civil Procedure Section 877.5 provides:

> "(a) Where an agreement or covenant is made which provides for a sliding scale recovery agreement

between one or more, but not all, alleged defendant tortfeasors and the plaintiff or plaintiffs:

"(1) The parties entering into any such agreement or covenant shall promptly inform the court in which the action is pending of the existence of the agreement or covenant and its terms and provisions; and

"(2) If the action is tried before a jury, and a defendant party to the agreement is a witness, the court shall, upon motion of a party, disclose to the jury the existence and content of the agreement or covenant, unless the court finds that such disclosure will create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

"The jury disclosure herein required shall be no more than necessary to be sure that the jury understands (1) the essential nature of the agreement, but not including the amount paid, or any contingency, and (2) the possibility that the agreement may bias the testimony of the alleged tortfeasor or tortfeasors who entered into the agreement.

"(b) As used in this section a 'sliding scale recovery agreement' means an agreement or covenant between a plaintiff or plaintiffs and one or more, but not all, alleged tortfeasor defendants, where the agreement limits the liability of the agreeing tortfeasor defendants to an amount which is dependent upon the amount of recovery which the plaintiff is able to recover from the nonagreeing defendant or defendants. This includes, but is not limited to, agreements within the scope of Section 877, and agreements in the form of a loan from the agreeing tortfeasor defendant to the plaintiff or plaintiffs which is repayable in whole or in part from the

recovery against the nonagreeing tortfeasor defendant."

Code of Civil Procedure Section 877.6 provides:

"(a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more tortfeasors, upon giving notice thereof in the manner provided in Sections 1010 and 1011 at least 20 days before the hearing. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

"(b) The issue of good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

"(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor from any further claims against the settling tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

"(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

"(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be

filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

"(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

"(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

"The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision."

The enactment of Sectons 877.5 and 877.6 clearly constitutes state action necessary to invoke the protection of the Fourteenth Amendment since this Court has held that mere judicial action in certain circumstances can constitutes state action to support a Fourteenth Amendment claim. *Shelley v. Kraemer,* 334 U.S. 1, 92 L.Ed. 1161, 68 S.Ct. 836 (1948); *Barrows v. Jackson,* 346 U.S. 249, 97 L.Ed. 1586, 73 S.Ct. 1031 (1953).

The California Supreme Court created the right of equitable indemnity when it previously decided that California was a comparative fault state in *American Motorcycle Assn. v. Superior Court,* 20 Cal.3d 578, 146 Cal.Rptr. 182, 578 P.2d 899 (1978). That being the case, the courts cannot on the one hand create a system of comparative fault and allow cross-complaints for indemnity in order to apportion fault among defendants and then allow a system where all parties try their case to a jury, but the non-

settling defendants are not entitled to benefit completely from it.

In both California BAJI Jury Instruction 12.69, which is used by California courts in liability cases when contributory negligence is not an issue, and BAJI Jury Instruction 12.69.3, which is used when contributory negligence is an issue, one of the questions the jury is asked to decide on the special verdict forms is:

> "ISSUE No. 4. Assuming the combined negligence of the defendants [and of other persons] whose negligence proximately contributed to the plaintiff's injury to be 100%, what percentage is attributable to each of such defendants [and such other persons] whose negligence was a proximate cause to plaintiff's injury?
>
> "ANSWER: To defendant..... %
> To defendant..... %
> To defendant..... %
> [To other persons ..... %]"

However, even if the jury concludes that CHRYSLER is 99% responsible and Petitioner or another non-settling defendant is 1% responsible for decedent's death, nevertheless, if the settlement in this case is approved, the entire verdict, if it is $150,000 or more, would have to be paid by the 1%-liable defendant. The SHEPHERDS, under joint and several liability that exists in California, will benefit from the verdict and will be able to collect the entire amount from Petitioner. CHRYSLER, by a finding of liability on the part of someone other than CHRYSLER, would benefit from the verdict, but Petitioner would not be able to benefit from the verdict other than if it receives a complete victory. If it is found even 1% liable, it would be responsible for the full amount of the judgment. This denies Petitioner equal protection of the law because Petitioner cannot effectively use or bene-

fit from a jury verdict which holds it partially at fault and is in excess of $150,000, even though it is a similarly-situated joint tortfeasor.

The Court of Appeal opinion at p. 34 blithely deals with this issue by stating that "any disparate treatment of non-settling defendants vis-a-vis settling defendants and plaintiffs, to pass constitutional muster, requires merely that the distinctions drawn by the statute bear some rational relationship to a conceivable legitimate state purpose." However, there are no cases cited by the Court of Appeal or decided by this Court which hold that even if the State has a legitimate interest in settlement that it can deprive certain benefits of a jury trial to some of the participants in a trial. For instance, the Court of Appeal states that "all parties retained the right to try a case to a jury on all relevant issues and to a jury verdict." (P. 38) If, in fact, that is the Court of Appeal's position, then certainly all of the parties to that verdict must be able to reap *all* the benefits from that verdict. To allow a case to be tried under the sham situation presented in this case and allow only two of the participants to the decision to benefit from all the jury's findings violates equal protection and due process, and the State, no matter how lofty its goals, cannot deny some of the benefits of the jury verdict to Petitioner.

Also, the alleged State purposes which supposedly legitimize Mary-Carter agreements do not apply to the settlement agreement in question. Other than the guarantee amount which might undoubtedly comfort the SHEPHERDS, the agreement does not dismiss any party. Thus, there is no saving of trial time, there is no settlement and the equitable apportionment of liability of potential joint tortfeasors is absolutely affected. The agreement in this case cannot be validated by any State interest since there is none.

II

Code Of Civil Procedure Section 877.5 Denies Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law Under The United States Constitution Because It Treats Non-Settling Defendants Under A Sliding Scale Agreement Different From Non-Settling Defendants Under California Code of Civil Procedure Section 877

Petitioner contends that Code of Civil Procedure Section 877.5 treats non-settling defendants under a sliding scale agreement different from non-settling defendants under the release statute, Section 877.

Section 877 provides:

> "Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort —
>
> "(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and
>
> "(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors."

Under Section 877, subdivision (a), a non-settling defendant is allowed to deduct any previous settlements from the ultimate verdict, whereas the non-settling defendant under Section 877.5 has nothing to deduct. This is a legislative classification which treats similarly-situated

parties differently in violation of the equal protection clauses of the United States Constitution.

The equal protection clause is violated when (a) state action, such as a legislative classification, is present, (b) persons who are similarly situated are treated differently, (c) the classification is arbitrary and unreasonable, and (d) the basis of the classification does not have a fair and substantial relation to the object of the legislation. *See Reed v. Reed,* 404 U.S. 71, 75-76, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971); *Eisenstadt v. Baird,* 405 U.S. 438, 446-47, 31 L.Ed.2d 349, 92 S.Ct. 1029 (1972); and *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164, 173, 31 L.Ed.2d 768, 92 S.Ct. 1400 (1972).

Applying the factors above to the instant case, California Code of Civil Procedure Section 877.5 authorizes defendants to enter into Mary Carter settlement agreements. In doing so, Section 877.5 creates two different classes of similarly situated joint tortfeasors that are treated differently.

Under Section 877(b), all non-settling defendants are denied the right to contribution or indemnity from any co-defendants that have settled, but are entitled, under Section 877(a), to set off against the judgment any amount that the plaintiff receives from a settling defendant. This lessens the likelihood of inequitable apportionment of liability.

However, Section 877.5, by not allowing a non-settling defendant in a Mary Carter situation to offset the guarantee amount, punishes that defendant by forcing him to potentially bear the entire cost of the judgment. The goal of settlement cannot be achieved, consistent with equal protection, by permitting some parties in multi-party litigation to receive an undeserved complete release from

liability while other parties are unjustly required to pay the full amount of any judgment rendered.

Also, Section 877.5, in conjunction with 877(a) and (b), creates two different classes of settling defendants: (1) those who pay a fixed sum settlement to the plaintiff and receive the protection of Section 877(b) from further liability, and (2) those who pay nothing at all to the plaintiff by virtue of their Mary Carter "guarantee," and yet who receive the same protection from any further liability.

This distinction and Mary Carter agreements violate the equal protection clause of the United States Constitution because they defeat the State's policy of equitably apportioning liability. Also, they frustrate the State's policy of encouraging resolution of cases through settlement by allowing one or more settling defendants to prohibit the plaintiff from settling with the remaining defendants and forcing them to go to trial.

The gist of a Mary Carter agreement, including the one in this case, is the clause requiring the plaintiff to continue to prosecute the case against the non-settling defendants, and the prohibition against any further settlements without the consent of the settling defendants. These provisions mandate that the case between the plaintiff and the remaining co-defendants will proceed to trial. Mary Carter agreements do *nothing* to ease the burden on the courts; rather, they increase the court system's load by preventing resolution of the entire case short of trial.

Thus Section 877.5, Mary Carter agreements and the resulting inequities these agreements inevitably create between different classes of defendants have no rational relationship to the broad statutory goals of Sections 877(a) and (b) and 877.6 and violates equal protection.

The Court of Appeal opinion held that sliding scale agreements are constitutional because they are rationally related to the State's legitimate interest in the disposition of cases and the maximization of recovery to injured plaintiffs, as well as the encouragement of complete settlements and does not defeat equitable apportionment of liability among joint or concurrent tortfeasors. As pointed out herein, the exact opposite is true. The State interest in maximizing recovery to a plaintiff is outweighed by the interference with the policies of settling cases and equitably apportioning fault among various tortfeasors.

III

The Settlement Agreement In This Case Is Collusive As A Matter Of Law And Thus A Denial Of Petitioner's Right To A Fair Trial In Violation Of The Due Process Clause Of The United States Constitution Because It Allows Chrysler To Remain In The Case At Trial As A Defendant And A Cross-Complainant And Because It Provides That The Judgment Received By The Shepherds Must Be A Collectible Judgment

A. The Settlement Denies Petitioner Due Process Because CHRYSLER'S Remaining In The Case Allows It To Manipulate The Evidence To The Detriment Of Petitioner And The Other Non-Settling Defendants

"[D]ue Process 'is not a technical conception with a fixed content unrelated to time, place and circumstances.' [Citations] Rather, the phrase expresses the requirement of 'fundamental fairness'. . . ." *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 24, 101 S.Ct. 2153, 68 L.Ed.2d 640, 648 (1981).

The essential elements of due process in a judicial proceeding are:

a. Timely and adequate notice; and

b. The right to a full and fair hearing, including an opportunity to

(1) present evidence to the trier of fact, and

(2) confront and cross-examine witnesses or evidence adverse to one's claim. *Goldberg v. Kelly*, 397 U.S. 254, 267-70, 25 L.Ed. 287, 90 S.Ct. 1011 (1970).

Petitioner contends that the settlement in this case is collusive in that although the tire and wheel coming off the Hanlon vehicle certainly caused the accident which forms the basis of the underlying lawsuit, the experts for Petitioner and the SHEPHERDS have testified that the death of Ms. Shepherd would probably not have occurred but for the fire caused by the defect (lack of crashworthiness) of decedent's vehicle which was manufactured by CHRYSLER. Each time Hanlon has testified, he has stated something different as to the whereabouts of the tire and wheel that fell off his vehicle. He testified at his first deposition in April of 1982 that he didn't see what happened to the wheel after it left his car and struck Ms. Shepherd's vehicle. In a later sworn statement in April of 1983 and at his second deposition in June of 1983 he testified he saw the wheel at the time of the accident, threw it into the weeds, came back with his brother the next day and found it, and disposed of it. Also, the SHEPHERDS' expert testified throughout his deposition that Ms. Shepherd's vehicle was defective because the gas tank intruded into the interior of the vehicle and because rubber and/or plastic clamps and hoses were used in connection with the gas tank instead of metal. This caused the rupture, and Petitioner's expert agrees with

this. Further, the SHEPHERDS' expert testified at his deposition that had the car not been defective there would likely have been no fire and decedent would not have burned to death.

With this evidence, any agreement that by its terms excludes CHRYSLER from paying money to the SHEPHERDS, excludes Hanlon as a defendant because the SHEPHERDS cannot collect from him, *and* allows the SHEPHERDS and CHRYSLER to participate at the trial and manipulate the evidence as to the remaining defendants is collusive as a matter of law and denies due process to the non-settling defendants.

Certain pieces of evidence that might be admissible against CHRYSLER but not against the remaining defendants will be allowed into evidence. For instance, there are numerous "gory" photographs of Ms. Shepherd's vehicle. Petitioner and the other non-settling defendants who had nothing to do with Ms. Shepherd's vehicle, would be able to prohibit their introduction into evidence on the grounds they are not relevant to the non-settling defendants alleged negligence. However, the SHEPHERDS will attempt to introduce the photographs into evidence as the basis of their expert's opinion that Ms. Shepherd's vehicle was defective. As this case is now structured, there really is no issue as to whether Ms. Shepherd's vehicle was or was not defective since CHRYSLER has settled with the SHEPHERDS. However, since CHRYSLER will remain in the case, the case will proceed forward on a "sham" theory in the hopes of driving up the verdict and improving the sympathy factor because of the gruesome way Ms. Shepherd died. CHRYSLER will argue for a high verdict against all defendants, knowing full well it will pay nothing if the verdict is $150,000 or more. The admissibility of evidence that might be admissible against CHRYSLER but

against no one else is one example of the potential for fraud that can occur in this case. The trial would not be a quest for truth but a deliberate attempt to drive up the verdict against a less liable defendant by allowing a joint tortfeasor to manipulate the evidence. Simply put, this would deny Petitioner its right to a fair trial under the due process clause of the United States Constitution and should not be allowed.

The Court of Appeal deals with this issue by stating that in ordinary negligence actions where joint tortfeasors are involved, co-defendants will present evidence to protect themselves. However, that analysis deals with a situation where all parties can be effected by the jury verdict and thus self-interest dictates among all defendants that they avoid liability and not drive up the verdict amount. Here the opposite is true. CHRYSLER, by being allowed to remain in the case, has as its main incentive to drive the jury verdict above $150,000 regardless of its fault and has no incentive to contest fault or the admission of evidence which would be admissible against it but not the other non-settling defendants. There would be no need for CHRYSLER to stay in the case and incur substantial fees unless they wanted to do all they could to drive the verdict up beyond $150,000. The Court of Appeal opinion makes the incredulous statement at p. 39 that "alert counsel has the responsibility and is in a position to protect a client in the record at trial." That being the case, certainly Petitioner would object at trial to gory photographs of Ms. Shepherd's body being burned in her vehicle coming into evidence as the basis of the SHEPHERDS' expert's opinion that the CHRYSLER vehicle was defective because that evidence would have no relationship to BLOOME. But since CHYRSLER is still in the case to pursue its cross-complaint and as a defendant, it would be very difficult for Petitioner to keep that evidence out on the grounds of relevancy because

CHRYSLER technically is in the case and the jury will so believe. The Court of Appeal opinion at p. 39 states that "participating parties can and will present evidence as best serves their interests and protect the record in the process and that a sliding scale settlement will not effect the nature, scope and direction of the evidence since none of the parties are prevented from introducing relevant evidence or making motions to limit evidence." Motions *in limine* can be made, but with CHRYSLER in the case, the evidence will most likely be admitted in some form, and Petitioner will be prejudiced.

Also, the non-settling defendants under California law cannot inform the jury of the actual interest of CHYRSLER. A jury may be informed of the existence of the agreement pursuant to Section 877.5(2), but the jury disclosure is limited only to that necessary to ensure that the jury understand the essential nature of the agreement but no including the amount paid or any contingency and the possibility that the agreement may bias the testimony of the alleged tortfeasor or tortfeasors who entered into the agreement.

This required disclosure is wholly inadequate to fully apprise the trier of fact of the Mary Carter settling defendant's role in the litigation. The very fact that keeps the settling defendant involved in the case is that his agreement with the plaintiff is a contingent one; *i.e.,* the more the plaintiff recovers from the remaining defendants, the less he has to pay plaintiff. In fact, CHRYSLER is remaining in this case, by its own words, to "protect its interests." Its interests in this case are the same as the SHEPHERDS, *i.e.,* to manipulate the evidence to drive up the verdict. The jury is kept wholly unaware of how much settling defendant has guaranteed.

The resulting prejudice to the remaining defendants is overwhelming. At the conclusion of the litigation the trier

of fact is instructed to apportion liability among those parties that it sees before it, which would include CHRYSLER. However, when the jury verdict is reached, CHRYSLER is relieved of liability if anyone other than Hanlon or CHRYSLER is found to have any fault whatsoever, and the verdict is over $150,000, which in this case is likely. This situation clearly denies the defendants a fair trial.

B. The Settlement Is Collusive Because It Provides For A Collectible Judgment, Thus Injecting Assets And Insurance Of Petitioner And The Other Non-Settling Defendants Into The Case

The insertion of the collectible judgment provision in this case, by necessity, injects into the case the assets and the insurance coverage of the non-settling defendants. Hanlon, who was uninsured, owned his vehicle, admitted working on the vehicle before the accident, and after the accident deliberately destroyed the evidence that was crucial to the defense of this case by disposing of the tire and wheel that fell off his vehicle. Hanlon deliberately failed to advise the California Highway Patrol officer of the whereabouts of the tire and wheel. Thus, the non-settling defendants are left with only photographs of Hanlon's vehicle after the accident in order to render judgments as to what caused the wheel to fall off while Hanlon, in turn, blames everyone but himself. CHRYSLER, by participating in the trial, has the ability to act collusively with the SHEPHERDS and point at everyone but Hanlon. By stressing the defect of decedent's vehicle manufactured by CHRYSLER, they can drive the verdict above the guarantee amount. The agreement specifically mentions defendants in terms of collectible judgment terminology, thus singling out *specific* defendants to shift the burden of loss to, *i.e.*, those who have the capacity to pay the judgment regardless of the

proportionate liability of those defendants to the SHEPHERDS. There is no reported case Petitioner can find that upholds such a provision in a settlement agreement.

The Court of Appeal opinion concludes that Section 877.5, subdivision (a)(2), provides for disclosure to the jury of the existence of the agreement and alleges that the potential problem is entirely avoidable. The Court of Appeal opinion misses the point. Defendants have a bad choice at best. On the one hand, an argument can be made that the agreement in its entirety be shown to the jury to show CHRYSLER'S involvement with the SHEPHERDS. The statute does not allow this choice but only allows the court to advise the jury of the content of the agreement, without telling the jury the guarantee amount. However, even if the agreement was shown to the jury, insurance is injected into the proceedings as is Hanlon's insolvency. Thus defendants are placed in an impossible situation where following either course will cause harm to defendants, *i.e.,* if the agreement is not shown to the jury, the jury will have no idea of the bias of CHYRSLER in wanting a large verdict but, if it is shown to the jury, the wealth of the defendants becomes an issue and defendants may appear to the jury to be intransigent wrongdoers for not settling. C.C.P. Section 877.5 provides no protection in this case and, at the very least, CHRYSLER must be removed as a party in this case if the co-defendants have any chance of a fair trial.

IV

It Is A Denial Of Petitioner's Right To Due Process And/Or Equal Protection Of The Laws Under The United States Consitution To Allow Chrysler To Remain In The Case And Pursue Its Cross-Complaint For Indemnity Even Though It Has Paid No Money In Settlement To The Shepherds, While At The Same Time Barring All Cross-Complaints For Indemnity Against Chrysler

Allowing CHRYSLER to remain in the case on its cross-complaint for indemnity and being able to fully take advantage of whatever verdict the jury reaches, while at the same time denying Petitioner and the other non-settling defendants their right to all the benefits of the jury verdict, is patently wrong and denies similarly-situated parties, namely potential joint tortfeasors, equal protection of the law. The harm to Petitioner as described herein is compounded by allowing the settling party to remain in the case and to pursue affirmative rights. That is patently unfair and inconsistent with our system of justice, where presumably the pursuit of truth is its cornerstone, Even as worthy a goal as promoting settlements cannot justify such unfairness to the non-settling defendants.

If, in fact, the legitimate State interest is to promote settlements and save trial time, allowing CHRYSLER to remain in the case and pursue its cross-complaint for indemnity accomplishes just the opposite.

V

To The Extent That Tech-Bilt v. Woodward Clyde & Associates Applies To Guarantee Agreements, The Procedure Established Therein Is Unconstitutional And A Denial Of Petitioner's Constitutional Right To Due Process And Equal Protection Of The Laws

Tech-Bilt v. Woodward Clyde & Associates, supra, is the recent California Supreme Court case dealing with the procedure to be used by California trial courts in deciding whether a settlement is in good faith. That case did not deal with a Mary Carter agreement; rather it dealt with a straight settlement where money was paid. The California Court of Appeal opinion in the case at bar remanded the case back for a *Tech-Bilt* hearing. As stated previously in this Petition, any procedure, whether established in *Tech-Bilt* or in any other case, which allows Co-Defendant CHRYSLER to remain in the case as a party, which allows the jury verdict to benefit the settling defendant who remains in the case and the plaintiff and denies certain benefits of the jury verdict to the non-settling defendants, and which allows a complete dismissal of cross-complaints for indemnity where a settling defendant pays no money to the plaintiff in settlement, violates the due process and equal protection clauses of the United Stated Constitution.

CONCLUSION

Although settlement of litigation is a valid public policy, no such policy is advanced in the underlying case. No trial time is saved, nor is any party removed from the case. All that the settlement in this case will do is enable the SHEPHERDS and CHRYSLER to manipulate the evidence, such as that dealing with the crashworthiness of the CHRYLSER vehicle, in such a way that those least

responsible to the SHEPHERDS will have to pay the entire verdict.

But for the defective condition of Ms. Shepherd's vehicle, most likely she would have not died. Allowing CHRYSLER, who manufactured both vehicles at issue in this case, to settle its case without paying any money and to exclude insolvent defendants from the purview of the jury's verdict, including Hanlon who owned the vehicle from which the tire and wheel became detached and who destroyed the evidence as to why it became detached, while at the same time allowing CHRYSLER to participate in the trial and manipulate the result, is wrong and denies Petitioner a fair trial. Further, advising the jury of the settlement cannot protect Petitioner because of the collectible judgment provision which mandates the jury be told the SHEPHERDS can only collect from insured or solvent defendants.

Sections 877.5 and 877.6 are unconstitutional and the agreement in this case is unconstitutional for the reasons stated herein.

Therefore, to prevent a gross miscarriage of justice in this case, Petitioner requests that certiorari be granted.

DATED: August 7, 1986

Respectfully submitted,

JONES, MAHONEY & BRAYTON

By: PAUL M. MAHONEY

APPENDIX A

In the Court of Appeal

OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MARK C. BLOOME CO.,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent,

ALANSON SHEPHERD, CHRISTINE SHEPHERD, CHRYSLER CORPORATION,
Real Parties in Interest.

2d Civil No. B011640
(Super. Ct. No EAC 31415)

Petition for Writ of Mandate. Granted.

Filed: February 21, 1986, Clay Robbins, Jr., Clerk.

Jones, Mahoney & Brayton and Paul M. Mahoney for Petitioner.

No appearance by Respondent.

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Petition for Writ of Mandate. Granted.

Filed: February 21, 1986, Clay Robbins, Jr., Clerk.

Jones, Mahoney & Brayton and Paul M. Mahoney for Petitioner.

No appearance by Respondent.

Clinnin, Siracuse & Belcher and Michael J. Belcher and Richard Salcido for Real Party in Interest Chrysler Corporation.

No appearance by Real Parties in Interest Alanson Shepherd and Christine Shepherd.

Law Offices of John Nouskajian, Jr. and Victor W. Santochi as joinder on behalf of Petitioner.

This matter is before us on transfer from the California Supreme Court which following its opinion in *Tech-Bilt, Inc.* v. *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, directed this court to issue an alternative writ.

We find Code of Civil Procedure section 877.5[1] constitutional. However, because the *Tech-Bilt* criteria are factual in nature and thus within the province of the trial court, the matter is remanded to the court below to conduct an evidentiary hearing and determine whether the proposed settlement agreement comports with law as set forth in *Tech-Bilt.*

PROCEDURAL AND FACTUAL BACKGROUND

Alanson and Christine Shepherd (Shepherds) were the parents of Diana Ree Shepherd (decedent) who was killed in an automobile accident on June 8, 1979, when her 1976 Plymouth Arrow automobile collided with a wheel and tire that had become detached from a 1971 Dodge Charger being driven by James Anthony Hanlon (Hanlon). The decedent's vehicle overturned when it hit the tire and wheel from Hanlon's automobile. When bystanders turned the decedent's vehicle upright, it burst into flames and she died.

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[1]All section references hereafter are to Code of Civil Procedure unless otherwise indicated.

The decedent, age 25 at the time of her death, was the fifth of eight children, living apart from her parents, and not contributing to their economic support. The Shepherds sought funeral expenses in the approximate amount of $3,000 and general damages for loss of society and comfort.

The defendants include Hanlon, Chrysler Corporation (Chrysler), Peat Manufacturing Company (Peat), which manufactured the wheels on Hanlon's vehicle, and numerous other parties that allegedly worked on the Hanlon vehicle, including petitioner Mark C. Bloome Co. (Bloome), which allegedly last worked on Hanlon's vehicle a few days before the accident.

At a settlement conference on December 13, 1984, a partial settlement of the action was entered into between the Shepherds and Chrysler. The agreement was a sliding scale agreement pursuant to section 877.5. In summary, the terms provide: (1) The Shepherds are guaranteed a collectible judgment up to $150,000; (2) any settlement the Shepherds make with any other defendant is subject to Chrysler's approval; (3) Chrysler will not withhold its approval of any reasonable settlement offer by the remaining defendants; (4) if the collectible judgment after trial exceeds $150,000, Chrysler will pay nothing; (5) if any judgment is less than $150,000, Chrysler will pay the difference; and (6) Chrysler will remain active in the case and participate in the trial.

On March 4, 1985, the trial court granted Chrysler's motion in a finding of a "good faith" settlement pursuant to section 877.6.

On March 7, 1985, Bloome petitioned for a writ of mandate to reverse the trial court's determination that the settlement was in good faith. The motion was denied on April 22, 1985. On May 1, 1985, Bloome filed a petition

for hearing in the California Supreme Court. After that court on May 2, 1985, issued its opinion in *Tech-Bilt, Inc.* v. *Woodward-Clyde & Associates, supra,* 38 Cal.3d 488, it granted Bloome's petition for review, and transferred the matter back to this court with directions to issue an alternative writ. On June 28, 1985, the alternative writ issued, and a hearing to show cause was ordered for November 20, 1985.

CONTENTIONS

Bloome raises constitutional objections to sections 877.5 and 877.6, arguing that the statutes violate equal protection, due process and the right to a jury trial.

DISCUSSION

1. *The statutes are constitutional.*

a. *Equal protection considerations.*

Bloome argues equal protection is violated in that the statutory scheme treats nonsettling defendants under a sliding scale agreement (§ 877.5) differently from nonsettling defendants under the release statute (§ 877).

Under section 877, subdivision (a), a nonsettling defendant is allowed to deduct any previous settlements from the ultimate verdict, whereas a nonsettling defendant under section 877.5 has nothing to deduct. Bloome contends this arrangement is a legislative classification which treats similarly situated parties differently, in violation of equal protection principles.

Riverside Steel Construction Co. v. *William H. Simpson Construction Co.* (1985) 171 Cal.App.3d 781, 789-792,[2] in addressing this very issue observed that no "suspect classification" or "fundamental right" being involved, the "rational relation" test was the correct one to apply in determining whether the classification was violative of equal protection.

"In determining whether a statute passes the rational relation basis test for equal protection 'there is a presumption of constitutionality "requir[ing] merely . . . that . . . distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose." [Citation.]' [Citation.] The Legislature had wide discretion in enacting sections 877, 877.5, and 877.6, and any possible resulting classification that resulted from the enactment of those sections may only be overthrown by a clear affirmative showing that they were palpably arbitrary and beyond rational doubt, erroneous." (*Id.*, at p. 791, first set of brackets in original; accord *City of Los Angeles* v. *Superior Court* (January 21, 1986, No. B005694) 86 Daily Journal D.A.R. 334, 335, ____ Cal.App.3d ____.)

Both *Riverside* and *City of Los Angeles* held section 877.5 does not violate equal protection, even though nonsettling defendants under section 877 are permitted to reduce a judgment by the amount of a settlement, while under section 877.5, nonsettling defendants are prohibited from recovering any such set-off. The reasoning is that sliding scale recovery agreements are rationally related to the state's legitimate interest in the disposition of cases, the maximization of recovery to injured plain-

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[2]The Supreme Court granted a hearing during the week of December 16, 1985. However, its order indicated the case remains published and citable.

tiffs, and the encouragement of complete settlements, and do not defeat equitable apportionment of liability among joint or concurrent tortfeasors. (*Riverside Steel Construction Co.* v. *William H. Simpson Construction Co., supra,* 171 Cal.App.3d at pp. 789-792; *City of Los Angeles,* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

Bloome further argues sections 877.5 and 877.6 violate equal protection because nonsettling defendants are denied the benefits of a jury verdict, while plaintiffs and settling defendants will enjoy the benefits of the verdict; even if the nonsettling defendant is found to be only one percent liable, if the verdict is in excess of $150,000, the entire verdict will be paid by the one percent liable defendant.

Our disposition of the immediately preceding issue is apposite to this one also. Any disparate treatment of nonsettling defendants vis-a-vis settling defendants and plaintiffs, to pass constitutional muster, requires merely that the distinctions drawn by the statute bear some rational relationship to a conceivable legitimate state purpose. (*Riverside Steel Construction Co.* v. *William H. Simpson Construction Co., supra,* 171 Cal.App.3d at p. 791; *City of Los Angeles,* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

As stated in *Riverside,* California has a legitimate interest in this area, and the disparate treatment accorded here is essential to the very nature of the sliding scale agreement. (*Id.,* at p. 792.).

Bloome also has a third equal protection challenge to the statute, arguing that it is unconstitutional to allow Chrysler to remain in the case and pursue its cross-complaint for indemnity even though it has paid no money in settlement to the Shepherds, while all cross-complaints against Chrysler for indemnity are barred. For the rea-

sons discussed above, this equal protection argument also fails.

b. *Jury trial and due process considerations.*

Bloome contends sections 877.5 and 877.6 which, upon a finding of a good faith settlement by the trial court, bar nonsettling defendants from pursuing cross-complaints for indemnity against settling defendants, deny nonsettling defendants their right to a jury trial on those cross-complaints. However, the jury trial contention is a red herring. "All parties retain the right to try a case to a jury on all relevant issues and to a jury verdict." (*City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.) Artful drafting will not conceal the fact that what Bloome is really complaining of is not that the statute deprives nonsettling defendants of a *jury trial* on the issue of comparative fault, but rather, that the statute bars nonsettling defendants from asserting *any* cross-complaints for indemnity.

Bloome's bottom line complaint is thus an economic due process one; the Legislature has interfered in the trial process, simultaneously limiting the liability of settling defendants, while increasing the exposure of nonsettling defendants. Bloome cannot argue it has a vested property right to a cross-complaint against Chrysler, because the state has not authorized any such cause of action against settling defendants.

Until 1957, California utilized the common law rule that there was no right by joint tortfeasors to apportion or allocate the plaintiff's damages among themselves. The rule was thus penal in nature, punishing the tortfeasors as "wrongdoers" by refusing to grant relief to them in adjusting losses among themselves. (*River Garden Farms, Inc.* v. *Superior Court* (1972) 26 Cal.App.3d 986, 993, fn. 5.)

If the effect of a finding of good faith settlement is an imperfect allocation of liability, that is insufficient to give rise to a violation of due process in light of the fact that the pre-1957 scheme comported with constitutional guarantees. (*City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

In *Fein* v. *Permanente Medical Group* (1985) 38 Cal.3d 137, our Supreme Court addressed a claim that Civil Code section 3333.2 denies due process because it limits the recovery of medical malpractice claimants to $250,000 in noneconomic damages. The *Fein* court stated, "*'[i]t is well established that a plaintiff has no vested property right in a particular measure of damages, and that the Legislature possesses broad authority to modify the scope and nature of such damages.* [Citations.] Since the demise of the substantive due process analysis of *Lochner* v. *New York* (1905) 198 U.S. 45 [49 L.Ed. 937, 25 S.Ct. 539], it has been clear that the constitutionality of measures affecting such economic rights under the due process clause does not depend on a judicial assessment of the justifications for the legislation or of the wisdom or fairness of the enactment . . . So long as the measure is rationally related to a legitimate state interest, policy determinations as to the need for, and the desirability of, the enactment are for the Legislature. . . . [§] . . . *[T]he Legislature retains broad control over the measure, as well as the timing, of damages that a defendant is obligated to pay and a plaintiff is entitled to receive,* and . . . the Legislature may expand or limit recoverable damages so long as its action is rationally related to a legitimate state interest." (*Id.,* at pp. 157-158, final italics ours.)

After setting forth the applicable due process standard of review, the *Fein* court upheld the statute as being rationally related to California's interest in reducing the

cost of medical malpractice insurance. (*Id.*, at pp. 157-159.)

Similarly, *American Bank & Trust Co.* v. *Community Hospital* (1984) 36 Cal.3d 359, 368-369, held section 667.7, which provides that when a plaintiff in a medical malpractice case has sustained "future damages" of $50,000 or more, compensation is to be paid periodically over time rather than in a lump sum at time of judgment, does not violate due process because it too is rationally related to the state's legitimate interest in reducing insurance costs in the medical malpractice area.

The instant statute differs from those challenged in *Fein* and *American Bank,* in that rather than limiting the recovery of plaintiffs, the Legislature has limited the liability of settling defendants, and expanded the liability of nonsettling defendants. (*City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.) The applicable due process standard of review here is the rational relation test. (*Ibid.*) "Settlement agreements ' "are highly favored as productive of peace and goodwill in the community, and reducing the expense and persistency of litigation" ' (*Stambaugh* v. *Superior Court* (1976) 62 Cal.App.3d 231, 236.) The statute, by cutting off cross-complaints against settling defendants, and thereby encouraging settlement, rationally furthers that goal. (*City of Los Angeles* v. *Superior Court, supra,* at p. 335.)

Bloome also argues section 877.5 deprives the nonsettling defendant of a right to a fair trial because the settling defendants can remain active in the litigation throughout the trial, and can manipulate the presentation of evidence so as to obtain a verdict in excess of the guaranteed amount, thus placing the entire burden on the nonsettling defendants.

However, Bloome overlooks the fact that even in an ordinary negligence action where joint tortfeasors are involved, one defendant may attempt to minimize or evade liability by urging upon the fact finder that another joined defendant should be held liable and to a greater degree. Such a series of events, which is not uncommon, does not give rise to a violation of due process. Alert counsel has the responsibility, and is in a position, to protect the client and the record at trial. Participating parties can and will present evidence as best serves their interest and protect the record in the process. A sliding scale settlement will not affect the nature, scope and direction of the evidence, since nothing contemplated therein prevents any and all parties from introducing relevant evidence or making motions to limit evidence. (*City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

Nor is due process violated where a settling defendant cooperates with the plaintiff in producing evidence in a *nonsliding* scale situation. (*Ibid.*)

The possibility of manipulation of evidence admittedly was a matter of concern prior to the enactment of the instant statute because sliding scale agreements were often kept *secret* from both the court and the nonsettling defendant.[3] (*Ibid.*)

The California Legislature, in apparent recognition of this problem, provided for mandatory disclosure in the statute to both the nonsettling defendant and the court, and discretionary disclosure to the jury. (§ 877.5, subd.

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[3]The general characteristics of the so-called "Mary Carter" agreements are described in "The Mary Carter Agreement — Solving the Problems of Collusive Settlements in Joint Tort Actions," (47 So. Cal. L. Rev. (1974) 1393), and the prejudicial effects of their secrecy are noted therein. (*Op. cit. supra,* at 1402.)

(a)(2).)[4] A subsequent addition to the statutory scheme, section 877.6, further enables a *pretrial* hearing on the good faith of an agreement. (*City of Los Angeles* v. *Superior Court, supra,* at p. 335.)

We utilize the protective standards of criminal proceedings as that body of law relates to accomplice testimony for further analysis. No violation of due process occurs where a witness for the prosecution is a former accomplice of the defendant, even though such witness may attempt to shift responsibility onto the former co-accomplice in order to escape, or at least minimize, punishment. (*Ibid.*) In such a case, the proper course is for the trial court to instruct the jury that the testimony of an accomplice ought to be viewed with distrust. (*People* v. *Cooper* (1970) 10 Cal.App.3d 96, 102; CALJIC No. 3.18 (4th ed. 1979).) Calling the jury's attention to the tainted character of accomplice testimony, including motives of the accomplice in testifying for the state is thus deemed to be an adequate safeguard. (*City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

A cautionary instruction being sufficient in the criminal context, a fortiori, with the safeguards written into the instant statute, the potential problems to the remaining

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[4]Section 877.5, subdivision (a)(2) states: "If the action is tried before a jury, and a defendant party to the agreement is a witness, the court shall, upon motion of a party, disclose to the jury the existence and content of the agreement or covenant, unless the court finds that such disclosure will create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. [¶] The jury disclosure herein required shall be no more than necessary to be sure that the jury understands (1) the essential nature of the agreement, but not including the amount paid, or any contingency, and (2) the possibility that the agreement may bias the testimony of the alleged tortfeasor or tortfeasors who entered into the agreement."

nonsettling defendant are not of constitutional proportions. (*Ibid.*)

Bloome sees an additional due process violation in that as a nonsettling defendant, it would be denied the benefit of a jury verdict which found it only minimally liable; if the jury concludes Chrysler is 99 percent liable and Bloome only 1 percent liable, Bloome will have to pay the entire judgment, if it is in excess of $150,000, and would thus be denied the benefit of the jury's findings.

Again, the applicable standard of review for this effect of the statute is the "rational relation" test, and for the reasons already set forth above, that test is satisfied. "[D]ue process [is not] violated although a nonsettling defendant found only minimally liable by the jury may have to pay the entire judgment." (*Ibid.*)

Bloome raises a final due process challenge: The insertion of the collectible judgment provision injects into the case the assets and insurance coverage of the nonsettling defendants. However, section 877.5, subdivision (a)(2) provides that *disclosure* to the jury of the existence and content of the agreement "shall be no more than necessary to be sure that the jury understands (1) the essential nature of the agreement, but not including the amount paid, or any contingency, . . ."

Bloome's contention is without merit. This potential problem is entirely avoidable. It would be unnecessary to disclose to the jury the collectible judgment provision, in ensuring that the jury had an understanding of the essential nature of the agreement.[5]

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[5]Further, while the fact of insurance is ordinarily inadmissible, the use of insurance "has become so common that jurors naturally assume as they enter the jury box that a defendant is insured against liability and that therefore the claimed danger of injection of insur-

2. *Good faith considerations.*

Lastly, Bloome contends: (1) *Tech-Bilt* does not apply to agreements of the type involved here; (2) to the extent *Tech-Bilt* does apply, the procedure is unconstitutional; and (3) should this court find *Tech-Bilt* applicable here, the case must be remanded for a determination of good faith pursuant to *Tech-Bilt's* criteria.

As a preliminary matter, there are no constitutional problems, for the reasons already discussed.

As a preliminary matter, there are no constitutional problems, for the reasons already discussed.

As for the applicability of *Tech-Bilt, Abbott Ford, Inc.* v. *Superior Court* (1985) 172 Cal.App.3d 675, 683,[6] stated, "[t]he same considerations apply to sliding scale agreements as to settlements involving joint tortfeasors generally, and the *Tech-Bilt* analysis is equally feasible when so applied." (Accord *City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

Tech-Bilt set forth numerous factors to be taken into account in determining good faith. These include a rough approximation of plaintiff's total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, a recognition that a settlor should pay less in settlement than if found liable after a trial, financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud or tortious conduct aimed at injuring the interests of nonset-

---

ance into the case has lost much of its sting." (*Hoffman* v. *Brandt* (1966) 65 Cal.2d 549, 554, fn. 2.)

[6]The Supreme Court granted a hearing during the week of December 16, 1985. However, its order indicated the case remains published and citable.

tling defendants. A settling defendant's figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be. A lack of good faith will be shown if the settlement is so far "out of the ball park" in relation to these factors so as to defeat the statute's equitable objectives. (*Tech-Bilt, Inc.* v. *Woodward-Clyde & Associates, supra,* 38 Cal.3d at pp. 499-500.)

However, bad faith is not established merely by a showing that settling defendants paid less than their theoretical proportionate or fair share. (*Id.,* at p. 499.) Because the determination of whether an agreement is in good faith requires the balancing of several factors among which but one is the total value of the agreement, and not just focusing on the fact that the settling defendants did not commit to pay a minimum unconditional amount of money, the absence of such a commitment does not render a sliding scale agreement in bad faith as a matter of law. (*Riverside Steel Construction Co.* v. *William H. Simpson Construction Co., supra,* 171 Cal.App.3d at pp. 797-798; *City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

In *Abbott Ford, Inc.* v. *Superior Court, supra,* 172 Cal.App.3d at page 685, the court stated "[b]oth *Tech-Bilt* and *Riverside* recognize that establishing the criteria for 'good faith' settlements is factual in nature, suggesting that the trial court is the appropriate place to conduct fact-finding and make suitable determinations of 'good faith' or lack thereof." (Accord *City of Los Angeles* v. *Superior Court, supra,* 86 Daily Journal D.A.R. at p. 335.)

Having reviewed the record, we are of the opinion the trial court is in the best position to evaluate whether the settlement agreement comports with the requirements of *Tech-Bilt.* Each litigant should be afforded the opportu-

nity of advancing both factual matter and legal argument in support of its respective position on this point. The question of the good faith of the proposed settlement agreement is a question of fact for the trial court to resolve, consistent with the principles set forth in *Tech-Bilt.*

DISPOSITION

The alternative writ, having served its purpose, is discharged. Let a peremptory writ of mandate issue compelling respondent court to set aside its decision of March 4, 1985, in which it found the subject settlement to be in good faith, and thereafter to conduct a new hearing, on proper notice to all parties and giving each litigant an opportunity to set forth its factual and legal position, to determine whether the subject settlement agreement comports with the requirements of *Tech-Bilt.*

NOT TO BE PUBLISHED

KLEIN, P.J.

We concur:

LUI, J.

DANIELSON, J.

APPENDIX B

Agreement Of Settlement And Covenant Not To Execute

This Agreement, entered into on _____ day of January, 1985, by and between the plaintiffs, Alanson and Christine Shepherd, and Chrysler Corporation, is premised upon the following recitals.

1. On or about June 8, 1979 Diana Ree Shepherd suffered fatal injuries in an automobile accident on Interstate Freeway I-10, east of Holt, in the City of Covina, County of Los Angeles.

2. The plaintiffs have filed a lawsuit in the Superior Court of Los Angeles, Case No. EAC 31415 and have served the following parties, Chrysler Corporation, Peat Manufacturing, Goodyear Tires, Tucker Tires, State of California, Citrus Community College, Roland Squires Chevron, James Anthony Hanlon and Mark C. Bloome, each of whom, with the exception of James Anthony Hanlon, has filed its answer denying any liability. The Complaint and answers are referenced hereto and incorporated as fully set forth at length herein.

3. The trial of this lawsuit has now been set for February 25, 1985.

4. It is the desire of the plaintiffs and Chrysler to compromise and settle the disputed claim as between themselves and to establish and declare that the terms of this settlement as set forth herein are fair, just and equitable and in good faith to all persons and parties including, but not limited to, the following: Mark C. Bloome, James Anthony Hanlon, Goodyear Tires, Roland Squires Chevron, Pet Manufacturing, State of California, Tucker Tire Company, and Citrus Community College.

5. The plaintiffs have evidenced an intention to further prosecute this lawsuit and their claims against the remaining defendants, and Chrysler has evidenced an intention to defend the Chrysler product and protect its interests under the terms of the settlement.

Now therefore, the undersigned agree to the following, each provision of which is mutually dependent and reciprocal:

(1) Each of the plaintiffs releases Chrysler Corporation from any and all liability and claims that they may have or claim to have against Chrysler Corporation pursuant to the Release of All Claims executed concurrently herewith and which is attached to this agreement as Schedule "A" and incorporated herein by reference as though fully set forth at length;

(2) Subject to the conditions as set forth herein, Chrysler Corporation guarantee that the Shepherds will receive from it the difference between any final collectable judgment that they may procure against the defendants, or any of them, up to but not to exceed the sum of One Hundred Fifty Thousand Dollars ($150,000); provided, however:

(a) Any settlement between Shepherds and the other defendants identified above, irrespective of the sum of said settlement or the terms thereof, shall terminate and nullify said guarantee, unless Chrysler Corporation approves said settlement, in which case the full amount of the settlement shall be an offset to said guarantee. Chrysler hereby agrees not to unreasonably withhold its approval of any reasonable settlements.

(b) In the event that the Shepherds procure a final collectable judgment in the sum of One Hundred Fifty Thousand Dollars ($150,000) or more against

the other defendants, Chrysler Corporation's obligation to the Shepherds under said guarantee is terminated and of no further effect;

(c) If, however, the Shepherds procure a final aggregate collectable judgment in any sum less than One Hundred Fifty Thousand Dollars ($150,000), Chrysler Corporation's duty under said guarantee is in a sum necessary to make up the different between the amount of any such final collectable judgment and One Hundred Fifty Thousand Dollars ($150,000).

(d) Plaintiff hereby covenant and agree to use all reasonable diligence to collect and execute on any final judgment against the remaining defendants.

Example:

(i) Suppose plaintiffs get an aggregate collectable judgment of "zero" then Chrysler Corporation will pay to plaintiffs One Hundred Fifty Thousand Dollars ($150,000);

(ii) Suppose the plaintiffs receive a final collectable aggregate judgment of Seventy-Five Thousand Dollars ($75,000) against all defendants, then Chrysler Corporation's obligation is to pay only Seventy-Five Thousand Dollars ($75,000);

(iii) If plaintiffs receive a final aggregate collectable judgment of One Hundred Fifty Thousand Dollars ($150,000), Chrysler Corporation's obligation is extinguished.

(iv) Suppose plaintiff settles with one of the remaining defendants for $50,000 and Chrysler approves said settlement, then Chrysler's guarantee shall only be $100,000.

(d) Since Chrysler Corporation will remain a defendant in the action and the possibility exists that there may be a judgment against Chrysler Corporation in an amount in excess of what it would be obligated to pay under this agreement, the Shepherds hereby covenent not to execute on any judgment rendered against Chrysler Corporation in this action, which is in excess of any amount owed under this agreement.

(3) Each party hereto waives any and all costs that they have or will incur in said lawsuit as against each other.

(4) This agreement is predicated upon a finding of good faith settlement under C.C.P. § 877.6 and that Chrysler Corporation's liability to any cross-complainant shall be barred under § 877.6.

(5) In the event the court does not make a good faith finding under § 877.6 and does not dismiss the cross-complaints against Chrysler Corporation as required (4) above, the parties hereto will be restored to all of their rights, duties and obligations, if any, that they had or were bound to prior to the execution of this agreement and each will be restored to their or its same position before this compromise settlement is executed including the right to prosecute and defendant said lawsuit and/or said claims.

(6) Chrysler Corporation will immediately take all steps to comply with the provisions of § 877.6 of the California Code of Civil Procedure and notify the other defendants of the terms and conditions herein and petition for and procure court approval of this compromise settlement and a determination that the settlement is in good faith as to all parties.

(7) As more fully set forth in the Release of All Claims, attached hereto as schedule "A", this is a compromise settlement of a disputed claim and the guarantee for the release shall not be deemed to be nor construed as, an admission of liability of Chrysler Corporation.

(8) This agreement and the attached Release of All Claims constitutes the entire agreement between the parties hereto and shall be binding upon and inure to the benefit of the heirs, successors, assigns and personal represents of the parties hereto.

Witness	Date	ALANSON SHEPHERD
Witness	Date	CHRISTINE SHEPHERD
DATE:		CHRYSLER CORPORATION
		By _____
DATE:		HURLEY, GRASSINI & WRINKLE
		By _____
DATE:		CLINNIN, SIRACUSE & BELCHER
		By _____

SCHEDULE A

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

Definitions:

Whenever the singular is used in this release it includes the plural. Whenever the masculine gender is used, it includes the feminine or neuter gender. Whenever the word "complaint" is used, it includes any and all amended complaints, amendments to complaints, cross-complaints, amended cross-complaints, amendments to cross-complaints, complaints-in-intervention, amended complaints-in-intervention, amendments to complaints-in-intervention.

The undersigned in executing this release shall be deemed to have executed this release for himself and his heirs, executors, administrators, successors, and assigns and as guardian ad litem for and on behalf of any minor and the heirs, executors, administrators and assigns of the minor for whom he has been appointed guardian ad litem pursuant to order of court or otherwise.

Whenever of the name of a party released and discharged is used it shall include the shareholders, directors, officers, agents, employees, heirs, executors, administrators, successors and assigns of the party and all other persons for whose acts and omissions said party may be held liable.

Release:

That the undersigned, being of lawful age, for the sole consideration of mutual promises and obligations as set forth in the Agreement of Settlement attached hereto as "Agreement of Settlement and Covenant Not to Exe-

cute", receipt of which is hereby acknowledged, do hereby and for our heirs, executors, administors, successors and assigns, release, acquit and forever discharge Chrysler Corporation and its agents, servants, successors, heirs, executors, administrators and assigns and all other persons for whose acts and omissions Chrysler Corporation may be held liable from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, save and except for any obligation or claim under the Agreement of Settlement and Covenent Not to Execute, which the undersigned now have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damages and the consequences thereof resulting or to the result from the accident, casualty or event which occurred on or about the 8th day of June, 1979, at or near Holt Avenue on Interstate I-10, East of Holt, in the City of Covina, County of Los Angeles.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees deny liability therefor.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

> "1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release,

which if known by him must have materially affected his settlement with the debtor."

The undersigned further declare and represent that no promise, inducement or agreement not herein expressed were provided for in the settlement agreement attached hereto, has been made to the undersigned, and that this release contains the entire agreement between the parties hereto, and that the terms of this release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this _____ day of _____, 1985.

_____ _____

Witness

_____ _____

Witness

_____ _____

Witness

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

SHEPHERD, ALANSON, et al.;
Counsel for Plaintiff: .....
CHRYSLER CORP., etc., et al.;
Counsel for Defendant: Clinnin-Siracuse.

Motion Of Respondent For Determination Of Good Faith Settlement & Order Dismissing & Barring Cross-Complaints Against Chrysler Corporation

Date: March 4, 1985.
Honorable P. Smith, Judge; C. McKingley, Deputy Sheriff; S. Weiss, Deputy Clark; R. Mackay, Reporter.
Minutes entered: March 4, 1985.

Matter stands submitted.
LATER (3:45 p.m.):

Motion for finding that settlement is in good faith is granted under the compulsion of *Burlington Northern Railraod Company v. Superior Court,* 137 CA 3rd 942, 946 and *Donpelling v. Superior Court,* 117 CA 3rd 798, 809.

The Court finds that neither the plaintiff and/or defendant, Chrysler Corporation have engaged in "tortious or wrongful conduct" against the non-settling parties.

Copy of this order to be distributed to counsel on March 5, 1985 in Department East A. (Matter is trailing for trial).

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
No. EAC 31415

ALANSON SHEPHERD, et al.,
Plaintiffs

v.

CHRYSLER CORPORATION, et al.,
Defendants.

AND RELATED CROSS-ACTIONS

Points And Authorities Of Mark C. Bloome Co. In Opposition To Motion Of Chyrsler Corporation For Finding Of "Good Faith" Settlement; Declaration Of Paul M. Mahoney

DATE: March 4, 1985
TIME: 9:00 a.m. DEPT. M

Filed: February 23, 1985 **County Clerk, East**

Jones, Mahoney and Brayton, Attorneys at Law; Attorneys for Defendant, Cross-Defendant and Cross-Complainant, Mark C. Bloome Co.

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS	1
CONTENTIONS AS TO LIABILITY	1
THE HISTORICAL BASIS OF GUARANTEE (MARY CARTER) AGREEMENTS	3
STATEMENT OF WHAT CHRYSLER SEEKS TO HAVE THE COURT APPROVE	5
SUMMARY OF BLOOME'S CONTENTIONS AS TO WHY THE COURT SHOULD NOT APPROVE THE NOT YET AGREED UPON SETTLEMENT AS BEING IN GOOD FAITH	6
I	
Code Of Civil Procedure Section 877.5 Denies The Non-Settling Defendants Equal Protection Of The Law And The Right To A Fair Trial Under The Due Process Clauses Of The California And Federal Constitutions	9
A. BLOOME HAS BEEN DENIED EQUAL PROTECTION	9
B. BLOOME IS BEING DENIED DUE PROCESS	11
II	
Code Of Civil Procedure Section 877.6 Is Unconstitutional Because, In Addition To Denying The Non-Settling Defendants A Jury Trial In Violation Of The California Constitution, It Also Denies The Non-Settling Defendants Equal Protection Of The Law And Due Process Because Plaintiffs, Chrysler And Hanlon Will Be Entitled To A Jury Trial On The Issue Of Comparative Fault, But The Non-Settling Defendants Will Not Be Able To Avail Themselves Of The Rights That Flow From The Jury Verdict	12

TABLE OF CONTENTS

Page

III

Recent Cases Show That The Prior Trend Of Trial Courts And Courts Of Appeal "Rubber Stamping" Settlements Is A Thing Of The Past And That Courts Must Now Look To The Potential For Liability Of The Settling Defendants To The Plaintiff As A Factor In Determining Whether Or Not A Settlement Is In "Good Faith" 14

CONCLUSION 18

APPENDIX E

2ND CIVIL NO.

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

MARK C. BLOOME CO.,
Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF
LOS ANGELES,
Respondent.

ALANSON SHEPHERD, CHRISTINE SHEPHERD,
CHRYSLER CORPORATION,
Real Parties in Interest.

Honorable Peter Smith
Superior Court No. EAC 31415

Petition For Writ Of Mandate And/Or Other Extraordinary Relief And Memorandum Of Points And Authorities In Support Thereof

---

JONES, MAHONEY & BRAYTON
By: PAUL M. MAHONEY
100 Pomona Mall West,
Suite 506
Pomona, California 91766
714/623-2411

Attorneys for Petitioner

Filed: March 7, 1985

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INDEX OF EXHIBITS	iv
INTRODUCTION	1
PRELIMINARY STATEMENT	1
SUMMARY OF THE TERMS OF THE SETTLEMENT AGREEMENT BETWEEN CHRYSLER AND THE SHEPHERDS WHICH THE TRIAL COURT FOUND TO BE IN GOOD FAITH	2
WHY WRIT RELIEF IS NECESSARY	4
PETITION FOR WRIT OF MANDATE	8
VERIFICATION	14
MEMORANDUM OF POINTS AND AUTHORITIES	15
I.	
Code Of Civil Procedure Section 877.5 Denies The Non-Settling Defendants Equal Protection Of The Law And The Right To A Fair Trial Under The Due Process Clauses Of The California And Federal Constitutions	15
A. Petitioner Has Been Denied Equal Protection	15
B. Petitioner Is Being Denied Due Process	17
II.	
Code of Civil Procedure Section 877.6 Is Unconstitutional Because, In Addition To Denying The Non-Settling Defendants A Jury Trial In Violation Of The California And United States Constitutions, It Also Denies The Non-Settling Defendants Equal Protection Of The Law And Due Process Because The Shepherds, Chrysler And Hanlon Will Be Entitled To A Jury Trial On The Issue Of Comparative Fault, But The Non-Settling Defendants Will Not Be Able To Avail Themselves Of The Rights That Flow From The Jury Verdict	18

TABLE OF CONTENTS

Page

III.

Recent Cases Show That The Prior Trend Of Trial Courts And Courts Of Appeal "Rubber Stamping" Settlements Is A Thing Of The Past And That Courts Must Now Look To The Potential For Liability Of The Settling Defendants To The Plaintiff As A Factor In Determining Whether Or Not A Settlement Is In "Good Faith" 21

CONCLUSION 28

APPENDIX F

B011640

MARK C. BLOOME CO.,
VS.
S.c.l.a.co.
SHEPHERD, ALANSON Et Al.

Petition for Writ of Mandate Is Denied.

Date: April 22, 1985

Jones, Mahoney & Brayton
Paul M. Mahoney
100 Pomona Mall West
Suite 506
Pomona, CA 91766

Received: April 23, 1985.

APPENDIX G

2nd Civil No. B011640

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

MARK C. BLOOME CO.,
Petitioner,

VS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,

ALANSON SHEPHERD, CHRISTINE SHEPHERD,
CHRYSLER CORPORATION,
Real Parties in Interest.

Petition for Hearing After Denial of Petition for Writ of Mandamus or In the Alternative Other Extraordinary Relief By the Court of Appeal

---

JONES, MAHONEY & BRAYTON
By: PAUL M. MAHONEY
100 Pomona Mall West, Suite 506
Pomona, California 91766
714/623-2411

Attorneys for Petitioner

TABLE OF CONTENTS

Page

Table Of Contents i

Table Of Authorities iii

Questions Presented 3

Statement Of Facts 6

I.

Code Of Civil Procedure Sections 877.5 And 877.6 Which, Upon A Finding Of A Good Faith Settlement By The Trial Court, Bar Petitioner And The Other Non-Settling Defendants From Pursuing Cross-Complaints For Indemnity Filed By Them Against Chrysler Deny Petitioner And The Other Non-Settling Defendants Their Right To A Jury Trial Under The California And United States Constitutions On Their Cross-Complaints For Indemnity 9

II.

Code Of Civil Procedure Sections 877.5 And 877.6 Which, Upon A Finding Of A Good Faith Settlement By The Trial Court, Bar Petitioner And The Other Non-Settling Defendants From Pursuing Cross-Complaints For Indemnity Filed By Them Against Chrysler Deny Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law And/Or Due Process Under The United States And California Constitutions Because Petitioner And The Other Non-Settling Defendants Are Denied The Benefits Of The Jury Verdict Reached In The Underlying Case, Whereas Chrysler And The Shepherds Are Able To Benefit From The Findings Of The Jury 12

TABLE OF CONTENTS

Page

III.

Code Of Civil Procedure Section 877.5 Denies Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law Under The United States And California Constitutions Because It Treats Non-Settling Defendants Under A Sliding Scale Agreement Different From Non-Settling Defendants Under Code Of Civil Procedure Section 877 14

IV.

The Settlement Agreement Approved By The Trial Court In This Case Is Collusive As A Matter Of Law And Thus A Denial Of Petitioner's Right To A Fair Trial In Violation Of The Due Process Clauses Of The California And United States Constitutions Because It Allows Chrysler To Remain In The At Trial Case As A Defendant And A Cross-Complainant And Because It Provides That The Judgment Received By The Shepherds Must Be A Collectible Judgment 15

A. The Settlement Denies Petitioner Due Process Because CHRYSLER'S Remaining In the Case Allows It To Manipulate the Evidence To the Detriment Of Petitioner and the Other Non-Settling Defendants 15

B. The Settlement is Collusive Because It Provides For a Collectible Judgment, Thus Injecting Assets and Insurance of Petitioner and the Other Non-Settling Defendants Into the Case 17

TABLE OF CONTENTS

Page

V.

It Is A Denial Of Petitioner's Right To Equal Protection Of The Law Under The United States And California Constitutions To Allow Chrysler To Remain In The Case And Pursue Its Cross-Complaint For Indemnity Even Though It Has Paid No Money In Settlement To The Shepherds, While At The Same Time Barring All Cross-Complaints For Indemnity Against Chrysler 19

VI.

The Chrysler Settlement Is Not In Good Faith Because It Bears No Reasonable Relationship To Chrysler's Fair Share Of The Potential Damages. Furthermore, Any Court Procedure Which Allows A Court Rather Than A Jury To Determine Proportionate Liability Is Unconstitutional In That It Denies Petitioner Its Right To A Jury Trial 20

Conclusion 24

APPENDIX H

ORDER GRANTING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
Second District, Division Three, No. B011640
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

MARK C. BLOOME COMPANY,
Petitioner
v.
SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,
Respondent
SHEPHERD et al.,
Real Parties in Interest

Petition for review GRANTED.

The matter is transferred to the Court of Appeal, Second Appellate District, Division Three, with directions to issue an alternative writ to be heard before that court when the proceeding is ordered on calendar.

Chief Justice

KAUS
Associate Justice

BROUSSARD
Associate Justice

REYNOSO
Associate Justice

GRODIN
Associate Justice

LUCAS
Associate Justice

Associate Justice

Filed: June 6, 1985 Lawrence P. Gill, Clerk
Received: June 10, 1985
Jones, Mahoney & Brayton

APPENDIX I

2nd Civil No. B011640

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

MARK C. BLOOME CO.,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,

ALANSON SHEPHERD, CHRISTINE SHEPHERD,
CHRYSLER CORPORATION,
Real Parties in Interest.

PETITION FOR REVIEW AFTER GRANTING OF PETITION FOR WRIT OF MANDATE BY THE COURT OF APPEAL

JONES, MAHONEY & BRAYTON
By: PAUL M. MAHONEY
100 Pomona Mall West, Suite 506
Pomona, California 91766
714/623-2411
Attorneys for Petitioner

Filed: March 24, 1986 Laurence P. Gill, Clerk

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i
TABLE OF AUTHORITIES iv
QUESTIONS PRESENTED 4
STATEMENT OF FACTS 7

I.

Code of Civil Procedure Sections 877.5 And 877.6 Which, Upon A Finding Of A Good Faith Settlement By The Trial Court, Bar Petitioner And The Other Non-Settling Defendants From Pursuing Cross-Complaints For Indemnity Filed By Them Against Chrysler Deny Petitioner And The Other Non-Settling Defendants Their Right To A Jury Trial Under The California And United States Constitutions On Their Cross-Complaints For Indemnity 10

II.

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TABLE OF CONTENTS

Page

III.

Code of Civil Procedure Section 877.5 Denies Petitioner And The Other Non-Settling Defendants Equal Protection Of The Law Under The United States And California Constitutions Because It Treats Non-Settling Defendants Under A Sliding Scale Agreement Different From Non-Settling Defendants Under Code Of Civil Procedure Section 877 16

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A. The Settlement Denies Petitioner Due Process Because CHRYSLER's Remaining In The Case Allows It To Manipulate The Evidence To The Detriment Of Petitioner And The Other Non-Settling Defendants 17

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TABLE OF CONTENTS

Page

V.

It Is A Denial Of Petitioner's Right To Equal Protection Of The Law Under The United States And California Constitutions To Allow Chrysler To Remain In The Case And Pursue Its Cross-Complaint For Indemnity Even Though It Has Paid No Money In Settlement To The Shepherds, While At The Same Time Barring All Cross-Complaints For Indemnity Against Chrysler 23

VI.

Tech-Bilt v. Woodward Clyde & Associates Does Not Apply To Guarantee Agreements Such As Is Involved In The Instant Case Because The Court In *Tech-Bilt* Did Not Discuss Guarantee Agreements In Establishing The Procedure To Be Used In Evaluating Whether A Settlement Was In Good Faith And Because In *Tech-Bilt* The Settling Defendant Did Not Remain In The Case 24

VII.

To The Extent That This Court Finds That *Tech-Bilt v. Woodward Clyde & Associates* Does Apply To Guarantee Agreements, The Procedure Established Therein Is Unconstitutional And A Denial Of Petitioner's Federal And State Constitutional Rights To A Jury Trial And Petitioner's Right To Due Process And Equal Protection Of The Laws 25

CONCLUSION 26

Court of Appeal Opinion (All Opinion page references herein are to Petitioner's page numbers) .. 28

APPENDIX J

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 3, No. B011640
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

MARK C. BLOOME COMPANY,
Petitioner
v.
SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,
Respondent;
SHEPARD,
Real Party in Interest.

Petition for review DENIED.

BIRD
CHIEF JUSTICE

APPENDIX K

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS\ANGELES

ALANSON SHEPHERD, et al.,
Plaintiff(s)
vs.
CHRYSLER CORPORATION, etc., et al.,
Defendant(s)

No.: EA C 31415

AMENDMENT TO COMPLAINT
SEC. 474 C.C.P.

Upon filing the complaint herein, plaintiff being ignorant of the true name of a defendant, and having designated said defendant in the complaint by a fictitious name, to-wit:

DOE 1

, and having discovered the true name of said defendant to be

MARK C. BLOOME CO., a Corporation

hereby amends his complaint by inserting such true name in the place and stead of such fictitious name wherever it appears in said complaint.

Dated: June 24, 1980

HURLEY & GRASSINI
A Law Corporation

Lawrence P. Grassini
Attorney for Plaintiff

Filed: June 25, 1980 D. Landry, Deputy

K-3

Filed: March 6, 1980

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALANSON SHEPHERD, CHRISTINE SHEPHERD,
Plaintiffs,
vs.
CHRYSLER CORPORATION, A CORPORATION; JAMES ANTHONY HANLON; and DOES 1 THROUGH 100, Inclusive,
Defendants.

No.: EAC 31415

COMPLAINT FOR DAMAGES
FOR WRONGFUL DEATH

Hurley and Grassini, a law corporation
Attorneys for Plaintiff

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, and for a cause of action against the Defendants, and each of them, allege:

FIRST CAUSE OF ACTION

1. Plaintiffs are the parents of DIANA REE SHEPHERD, deceased, and are the sole surviving heirs at law of Decedent.

2. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants, DOES 1 through 100, Inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Each of the Defendants designated herein as a DOE is negligently or otherwise legally responsible in some man-

ner for the events and happenings herein referred to and caused injuries and damages proximately thereby to the Plaintiff, as herein alleged. Plaintiff will ask leave of Court to amend this Complaint to show their names and capacities when the same have been ascertained.

3. At all times herein mentioned, Defendants, and each of them, were the agents, servants and employees, each of the other, and at all times pertinent hereto were acting within the course and scope of their authority as such agents, servants and/or employees.

4. At all times herein mentioned, Defendants, CHRYSLER CORPORATION, was and is a corporation duly organized and existing under and by virtue of the laws of the State of California with its principal place of business located in the County of Los Angeles, State of California.

5. At all times herein mentioned, Defendants, JAMES ANTHONY HANLON, DOES 1 through 100, and each of them, were the registered owners of a certain 1971 Dodge Charger automobile, California License Number 1 TONY H, and at all times herein mentioned were driving said automobile with the knowledge, permission and consent, each of the other.

6. At all times herein mentioned, the San Bernardino Freeway, also known as Interstate 10, at or near the overhead crossing of Holt Avenue, is a public thoroughfare located in the City of Pomona, County of Los Angeles, State of California.

7. On or about June 8, 1979, DIANA REE SHEPHERD, deceased, was driving a 1971 Plymouth Arrow automobile, California License Number 850 PXQ, on the San Bernardino Freeway at or near the overhead crossing of Holt Avenue in the City of Pomona, County of Los

Angeles, State of California, at which time and place the Defendants, and each of them, so negligently, carelessly, recklessly and unlawfully drove, maintained, operated and controlled their vehicle so as to cause the vehicle driven by DIANA REE SHEPHERD, deceased, to crash, thereby proximately causing her death.

8. Immediately prior to death, Decedent, DIANA REE SHEPHERD, was an adult person, age twenty-four, in good physical and mental condition, and was a faithful and dutiful daughter to Plaintiffs.

9. As a proximate result of said acts of negligence of Defendants, and each of them, and the death of said Decedent, DIANA REE SHEPHERD, Plaintiffs have been deprived of the society, comfort, protection, services and support of said Decedent and have thereby sustained pecuniary loss in a sum as yet undetermined.

10. As a further proximate result of the said acts of negligence of Defendants, and each of them, and the death of Decedent, DIANA REE SHEPHERD, Plaintiffs have paid funeral and burial expenses in a sum as yet undetermined.

11. Plaintiffs have been generally damaged in an amount within the jurisdiction of this Court.

SECOND CAUSE OF ACTION

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINA SHEPHERD, and for a second, separate and distinct cause of action against Defendants, and each of them, allege:

12. Plaintiffs repeat, reallege, and replead all of the First Cause of Action herein and incorporate the same by reference as though set forth in full at this place.

13. Prior to June 8, 1979, Defendants, and each of them, negligently, recklessly, unlawfully and carelessly manufactured, designed, assembled, inspected, sold, distributed, consigned, supplied, maintained and repaired the said 1971 Dodge Charger automobile and its component parts.

14. On or about June 8, 1979 and as a proximate result of said negligence of Defendants, and each of them, the left front wheel of the said 1971 Dodge Charger automobile was caused to become separated from the rest of the Dodge Charger automobile while that automobile was being driven by Defendants, and each of them, on the San Bernardino Freeway at or near the overhead crossing of Holt Aveune, in the City of Pomona, County of Los Angeles, State of California, thereby causing the automobile which Decedent, DIANA REE SHEPHERD, was driving to crash, and thereby proximately causing the death of Decedent and the damages herein enumerated.

THIRD CAUSE OF ACTION

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, and for a third, separate and distinct cause of action against the Defendants, and each of them, allege:

15. Plaintiffs repeat, reallege and replead all of the First Cause of Action herein and incorporate the same by reference as though set forth in full at this place.

16. Prior to June 8, 1979, Defendants, and each of them, negligently, recklessly, carelessly, and unlawfully performed mechanical work on the said Dodge Charger automobile.

17. On or about June 8, 1979, as a proximate result of the negligence of Defendants, and each of them, the left

front wheel assembly of said Dodge Charger automobile became separated from the rest of that automobile while that automobile was being driven by Defendants, and each of them, on the San Bernardino Freeway at or near the Holt Avenue overcrossing in the City of Pomona, County of Los Angeles, State of California, thereby causing the automobile in which Decedent, DIANA REE SHEPHERD, was driving to crash, proximately causing her death.

FOURTH CAUSE OF ACTION

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, and for a fourth, separate and distinct cause of action against Defendants, and each of them, allege:

18. Plaintiffs repeat, reallege and replead all of the First and Second Causes of Action herein, and incorporate the same by reference as though set forth in full at this place.

19. At the times herein mentioned, Defendants, and each of them, were and are engaged in the business of manufacturing, designing, inspecting, assembling, selling, distributing, consigning, supplying, and maintaining automobiles and their component parts for sale to and use by members of the general public, and as a part of their business, Defendants, and each of them, manufactured, designed, inspected, assembled, sold, distributed, consigned, supplied, maintained and repaired the specific Dodge Charger automobile herein refered to and its component parts.

20. At all times herein mentioned, Defendants, and each of them, knew and intended that the Dodge Charger automobile and its component parts would be purchased

by members of the general public and used by the purchasers and others without inspection for defects.

21. Prior to and on or about June 8, 1979, Defendants, and each of them, were using the said Dodge Charger automobile in a reasonably foreseeable manner as described herein.

22. The said Dodge Charger automobile was at the time Defendants, and each of them, purchased it, defective and unsafe for its intended purpose in that, among other defects, the left front wheel and axle assembly had a tendency to become separated from the rest of the automobile.

23. On or about June 8, 1979, Defendants, and each of them, were driving the said Dodge Charger automobile on the San Bernardino Freeway at or near the overhead crossing of Holt Avenue in the City of Pomona, County of Los Angeles, State of California. During the course of this use and as a proximate result of the defect hereinabove described, the left front wheel of the automobile fell off, causing Decedent's automobile to go out of control and crash, proximately causing the death of the Decedent.

FIFTH CAUSE OF ACTION

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, and for a fifth, separate and distinct cause of action against Defendants, and each of them, allege:

24. Plaintiffs repeat, reallege and replead all of the First Cause of Action herein, and incorporate the same by reference as though set forth in full at this place.

25. Prior to June 8, 1979, Defendants, and each of them, negligently, recklessly, unlawfully and carelessly

manufactured, designed, assembled, inspected, sold, distributed, consigned, supplied, maintained and repaired the said 1976 Plymouth Arrow automobile and its component parts.

26. On or about June 8, 1979, as a proximate result of said negligence of Defendants, and each of them, said Plymouth Arrow automobile burst into and was totally engulfed by flames during the aforementioned crash, proximately causing the death of Decedent and the damages enumerated herein.

SIXTH CAUSE OF ACTION

COME NOW the Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, and for a sixth, separate and distinct cause of action against Defendants, and each of them, allege:

27. Plaintiffs repeat, reallege and replead all of the First and Fifth Causes of Action herein and incorporate the same by reference as though set forth in full at this place.

28. At all times herein mentioned, Defendants, and each of them, were and are engaged in the business of manufacturing, designing, inspecting, assembling, selling, distributing, consigning, supplying, and maintaining automobiles and their component parts for sale to and use by members of the general public, and as a part of their business, Defendants, and each of them, manufactured, designed, inspected, assembled, sold, distributed, consigned, supplied, maintained and repaired the specific Plymouth Arrow automobile herein referred to and its component parts.

29. At all times herein mentioned, Defendants, and each of them, know and intended that the Plymouth

Arrow automobile and its component parts would be purchased by members of the general public and used by the purchasers and others without inspection for defects.

30. Prior to and on or about June 8, 1979, Decedent, DIANA REE SHEPHERD, was using the said Plymouth Arrow automobile in a reasonably foreseeable manner as described herein.

31. The said Plymouth Arrow automobile was at the time Decedent purchased it, defective and unsafe for its intended purpose in that, among other defects, the vehicle itself, and gas tank in particular, were not crashworthy and were susceptible to bursting into and being engulfed by flames during reasonably foreseeable crashes. Further, the automobile burst into, and was totally engulfed by flames during the aforementioned crash, proximately causing the death of Decedent and the damages herein enumerated.

WHEREFORE, Plaintiffs, ALANSON SHEPHERD and CHRISTINE SHEPHERD, pray judgment against Defendants, and each of them, as follows:

1. For damages in an amount within the jurisdictional limits of this Court;

2. For funeral and burial expenses according to proof:

3. For loss of earnings according to proof:

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court may deem just and proper.

DATED: March 5, 1980

HURLEY & GRASSINI
A Law Corporation

LAWRENCE P. GRASSINI
Attorneys for Plaintiffs

K-11

EAC 31415

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

ALANSON SHEPHERD, CHRISTINE SHEPHERD

VS.

CHRYSLER CORPORATION, a Corporation;
JAMES ANTHONY HANLON; and
DOES 1 THROUGH 100, Inclusive,

Certificate of Assignment

A civil action or proceeding presented for filing in a district other than the Central District must be accompanied by this certificate. An action for personal injury, wrongful death or damage to property presented for filing in the Central District must be accompanied by this certificate. If the ground is the residence of a party, his name and residence shall be stated.

☒ The undersigned declares that the above entitled matter is filed for proceedings in the East District of the Superior Court under Rule 2, Section 3 of this court for the checked reason:

		Nature of Action	Ground
☐	1	Adoption	Petitioner resides within the district
☐	2	Conservator	Petitioner or conservatee resides within the district
☐	3	Contract	Performance in the district is expressly provided for
☐	4	Equity	The cause of action arose within the district
☐	5	Eminent Domain	The property is located within the district
☐	6	Family Law	Plaintiff, defendant, petitioner or respondent resides within the district

		Nature of Action	Ground
☐	7	Forceable Entry	The property is located within the district
☐	8	Guardianship	Petitioner or ward resides within the district
☐	9	Habeas Corpus	No action pending, the person is held within the district
☐	10	Mandate*	The defendant functions wholly within the district
☐	11	Name Change	The petitioner resides within the district
☐	12	Personal Property	The property is located within the district
☐	13	Probate	Decedent resided or petitioner resides within the district
☐	14	Prohibition*	The defendant functions wholly within the district
☐	15	Review*	The defendant functions wholly within the district
☐	16	Small Claims Appeal	The lower court is located within the district
☐	17	Title to Real Property	The property is located within the district
☐	18	TORT	The cause of action arose within the district
☐	19	TORT*	The cause of action arose outside of this county
☐	20	Transferred Action	The lower court is located within the district
☐	21	Unlawful Detainer	The property is located within the district

The residence of the petitioner, respondent, deceased, conservatee, ward, plaintiff, or defendant _____

_____
(Name)

is _____
(Address)

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on March 5, 1980 at North Hollywood, California.

HURLEY & GRASSINI
A Law Corporation

LAWRENCE P. GRASSINI

* Prerogative writs concerning a court of inferior jurisdiction and Tort Actions arising outside of the county may be filed in Central District only.

APPENDIX L

Case No. EAC 31415

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALANSON SHEPHERD and CHRISTINE SHEPHERD,
Plaintiffs
vs.
CHRYSLER CORPORATION, a Corporation
JAMES ANTHONY HANLON, and DOES
1 THROUGH 100, Inclusive,
Defendants

CHRYSLER CORPORATION, a Corporation,
Cross-complainant,
vs.
JAMES ANTHONY HANLON, and DOES 1
THROUGH 20, Inclusive,
Cross-defendants.

Cross-Complaint by Chrysler Corporation

Law Offices
CLINNIN, SIRACUSE & BELCHER
Attorneys for Defendant
and Cross-complainant,
Chrysler Corporation

CHRYSLER CORPORATION alleges:

1. The true names and capacities of cross-defendants DOES 1 through 20 are to Chrysler unknown and will be inserted by leave of court by amendment when same are ascertained.

2. That at all times herein mentioned Chrysler was and is a corporation authorized to do and doing business in the State of California.

3. That Chrysler is informed and believes and thereon alleges that each of the defendants was negligent in their conduct and activities, either by act or omission, and the said negligence of each was the or a contributing cause to the accident, injuries and death which forms the basis of the case-in-chief as more fully identified below.

4. That each of the cross-defendants was the agent, servant and employee of each of the other cross-defendants and was at all times apposite acting within the course and scope of the employ.

5. That there has heretofore been filed and served on Chrysler an action entitled *Alason Shepherd and Christine Shepherd vs. Chrysler Corporation, a Corporation; James Anthony Hanlon and Does 1 through 100, Inclusive,* Superior Court, County of Los Angeles number EAC 31415 which said complaint is referred to and incorporated herein for informational purposes only as fully as though set forth at length.

6. That contemporaneously with the filing of this cross-complaint Chrysler has filed its answer to said complaint which said answer is referred to and by such reference incorporated herein as fully as though set forth at lenght.

7. That Chrysler has and will in the future be compelled to incurr cost, expenses and attorneys' fees in defending itself in said action all to its damages in an amount to be ascertained down stream at time of trial and thereafter.

8. That each of the cross-defendants owes a duty to Chrysler to hold it harmless and to indemnify it, either

wholly or in part, for all liabilities, claims, costs, expenses and attorneys' fees suffered or incurred arising out of or due to said accident and/or lawsuit as forth in said case-in-chief.

9. That Chrysler is informed and believes and thereon alleges that each of said cross-defendants disputes Chrysler's claims herein and that a bona fide disputes exists between the parties hereto requiring a judgment declaring inequity the collative rights, duties and legal responsibilities, if any, of the parties hereto not only to the plaintiffs in the case-in-chief but as between themselves.

WHEREFORE, CHRYSLER prays judgment against the cross-defendants, and each of them, as follows:

1. That the cross-defendants and each of them indemnity, wholly or in part, and to hold Chrysler harmless from all liabilities, claims, costs, expenses and attorneys' fees that may be incurred or suffered by Chrysler in reference to the case-in-chief;

2. That a judgment be entered declaring the correlative rights, duties and legal responsibilities of the cross-defendants to the plaintiffs in the case-in-chief and to each other;

3. For costs of suit and for such other and further relief as to the court seems proper.

DATED: April 9, 1980.

CLINNIN, SIRACUSE & BELCHER

By: ROBERT G. CLINNIN
Attorneys for Defendant and Cross-complainant, Chrysler Corporation

Addressed as follows:

ALLARD, SHELTON & O'CONNOR
Attorneys at Law
100 Pomona Mall West, Sixth Floor
Pomona, California 91766

Attention: PAUL M. MAHONEY, ESQUIRE.

Executed onAugust 1, 1980 at Los Angeles, California.

I declare under penalty of perjury, that the foregoing is true and correct.

/s/ Betty Swain
BETTY SWAIN

No. EAC 31415

SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES

ALANSON SHEPHERD, CHRISTINE SHEPHERD,
Plaintiffs,

v.

CHRYSLER CORPORATION, a corporation, et al.,
Defendants.

MARK C. BLOOME CO., INC.,
Cross-Complainant,

v.

CHRYSLER CORPORATION, a Corporation;
JAMES ANTHONY HANLON; and
DOES 1 THROUGH 100, inclusive,
Cross-Defendants.

Cross-Complaint for Indemnity

ALLARD, SHELTON AND O'CONNOR
Attorneys at Law

Attorneys for Defendant
and Cross-Complainant,
Mark C. Bloome Co., Inc.

COMES NOW Cross-Complainant, MARK C. BLOOME CO., INC., and for a cause of action against Cross-Defendants, and each of them, complains and alleges as follows:

FIRST CAUSE OF ACTION

(Equitable Indemnity)

1. The true names and capacities, whether individual, corporate, associate, or otherwise, of Cross-Defendants, DOES 1 through 100, inclusive, are unknown to Cross-Complainant, who therefore sues said Cross-Defendants by such fictitious names, and Cross-Complainant will ask leave of court to amend this Cross-Complaint to show their true names and capacities when the same have been ascertained.

2. Cross-Complainant is informed and believes, and thereon alleges, that Cross-Defendants sued herein as DOES 1 through 100, inclusive, are in some manner tortiously responsible for the events and happenings referred to in this Cross-Complaint, and are liable to Cross-Complainant as hereinafter alleged.

3. Cross-Complainant is informed and believes, and upon such information and believe alleges, that at all times hereinafter mentioned, Cross-Defendant, CHRYSLER CORPORATION, is a corporation authorized to do business, and doing business in the State of California.

4. At all times herein mentioned, Cross-Complainant, MARK C. BLOOME CO., INC., is a corporation authorized to do business and doing business in the State of California.

5. Cross-Complainant is informed and believes, and upon such information and belief alleges, that at all times herein mentioned each of the Cross-Defendants was acting as the agent, servant, or employee of the other Cross-Defendants and within the scope of said agency and employment.

6. There has heretofore been served and filed on MARK C. BLOOME CO., INC., as DOE 1, an action entitled "*Alanson Shephard, Christine Shephard v. Chrysler Corporation, et al.* Los Angeles County Superior Court Case No. EAC 31415" which said complaint is referred to and incorporated herein for informational purposes only as fully set forth at length.

7. Cross-Complainant denies the allegations of Plaintiffs' complaint against it and denies that it is liable thereunder, but if in fact Cross-Complainant is held liable to Plaintiffs for damages, such damages were caused by the primary and active negligence, carelessness and tortious conduct of Cross-Defendants, and each of them, and Cross-Complainant is therefore entitled, by reason of law, to be indemnified and reimbursed for any and all monies expended in satisfaction of a judgment entered against Cross-Complainant as well as attorneys' fees and costs, including investigative costs incurred in defending the underlying action.

AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST CROSS-DEFENDANTS, AND EACH OF THEM, CROSS-COMPLAINANT COMPLAINS AND ALLEGES AS FOLLOWS:

(Comparative Indemnity)

1. Cross-Complainaint realleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 7 of the First Cause of Action.

2. Cross-Complainant alleges that if it is found negligent or tortiously responsible in whole or in part for the damages suffered by Plaintiffs herein, then Cross-Complainant is entitled to partial (comparative) indemnity

from Cross-Defendants, and each of them, on the basis of their comparative fault for the damages sustained herein.

AS AND FOR A THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST CROSS-DEFENDANTS, AND EACH OF THEM, CROSS-COMPLAINANT COMPLAINS AND ALLEGES AS FOLLOWS:

(Declaratory Relief)

1. Cross-Complainant realleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 7 of the First Cause of Action, and paragraph 2 of the Second Cause of Action.

2. A bona fide dispute and actual controversy exists between Cross-Complainant and Cross-Defendants, and each of them, concerning the respective rights, obligations and duties of each Cross-Defendant to Cross-Complainant in connection with the accident which is the subject of the complaint filed herein.

3. Cross-Complainant asks this court for declaration of the rights and liabilities between Cross-Complainant and each of the Cross-Defendants herein with specific reference to Cross-Complainant's right of equitable indemnity and partial (comparative) indemnity. No adequate remedy exists at law other than herein prayed for by which the rights and responsibilities of Cross-Complainant and Cross-Defendants, and each of them, can be determined for a payment of any judgment rendered on Plaintiffs' complaint.

WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants, and each of them, as follows:

1. That the court declare the rights and duties between the parties herein declaring that Cross-Complainant is entitled to equitable or partial (comparative) indemnity for any and all monies expended in the satisfaction of a judgment rendered against Cross-Complainant;

2. For judgment indemnifying Cross-Complainant against any verdict, settlement or judgment by Plaintiffs herein;

3. For attorneys' fees and expenses;

4. For costs of suit incurred herein; and

5. For such other and further relief as the court deems just and proper.

Dated: July 22, 1980

ALLARD, SHELTON & O'CONNOR

By s/ PAUL M. MAHONEY

PAUL M. MAHONEY

Attorneys for Cross-Complainant, Mark C. Bloome Co., Inc.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

I am and was on the date herein mentioned over eighteen years of age, a citizen of the United States, and not a party to the cause referred to in the attached document; I am employed with ALLARD SHELTON & O'CONNOR, attorneys for Def. C/C herein, and my business address and the office of said attorneys is located at 100 Pomona Mall West, Sixth Floor, Pomona, Los Angeles County, California 91766; that on August 12, 1980, I served the attached document on the party or parties hereinafter named, by enclosing a true copy in an envelope addressed as follows, to wit:

Robert G. Clinnin, Esq.
Clinnin, Siracuse & Belcher
Suite 910
700 South Flower Street
Los Angeles, California 90017

(Summons on Cross-Complaint and Cross-Complaint For Indemnity)

which is the address of the above-named person or persons, and after sealing said envelope and fully prepaying the postage thereon, I deposited the same so addressed in the United States mail at Pomona, Los Angeles County, California; that there is a regular communication by mail between the post office of deposit and the said place or place shown above.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: August 12, 1980

s/ROSEMARIE HALLAHAN
ROSEMARIE HALLAHAN

PROOF OF SERVICE BY MAIL
(1013a. 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid: I am over the age of eighteen years and not a party to the within entitled action; my business address is:

100 Pomona Mall West, Suite 506, Pomona, CA 91766

On October 1, 1980, I served the within Substitution of Attorney;

on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pomona addressed as follows:

Hurley and Grassini,
A Law Corporation,
11313 Weddington Street,
North Hollywood, CA 91601

Executed on October 1, 1980 (date) at Pomona (place),

California

I delare: under penalty of perjury, that the foregoing is true and correct.

CAROLE HARSH
Signature

CAROLE HARSH

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On August 7, 1986, I served the within Petition for a Writ of Certiorari in re: "Mark C. Bloome Co., vs Superior Court of the State of California" in the United States Supreme Court, October Term 1986, No. ;

on the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

The Honorable Peter Smith
Los Angeles County Superior Court
400 Civic Center Plaza
Pomona, CA 91766 (3)

Clerk
Los Angeles County Superior Court
400 Civic Center Plaza
Pomona, CA 91766 (3)

Clerk
Court of Appeal, Second Appellate District
3580 Wilshire Blvd., Room 301
Los Angeles, CA 90010 (3)

Lawrence P. Grassini, Esq.
Hurley & Grassini
11313 Weddington Street
North Hollywood, CA 91601 (3)

Michael J. Belcher, Esq.
Clinnin, Siracuse & Belcher
700 S. Flower Street, Suite 910
Los Angeles, CA 90017 (3)

Lewis R. Titus, Esq.
1419-F South Margarita Ave.
Alhambra, CA 91803 (3)

Edmond W. Clarke, Esq.
Kirtland & Packard
626 Wilshire Boulevard
Los Angeles, CA 90017 (3)

Victor W. Santochi, Esq.
Law Offices of John Nouskajian, Jr.
835 Mission Street
S. Pasadena, CA 91030 (3)

Darryl A. DeCuir, Esq.
Chase, Rotchford, Drukker & Bogust
700 S. Flower St., Suite 500
Los Angeles, CA 90017 (3)

N. B. Peek, Esq.
Deputy Attorney General
State of California
3580 Wilshire Blvd.
Los Angeles, CA 90010 (3)

James E. Hoffman, Esq.
Bodkin, McCarthy, Sargent & Smith
707 Wilshire Blvd., 51st Floor
Los Angeles, CA 90017 (3)

Edward Wilson, Esq.
Law Offices of Bernard J. Maryanski
200 S. Manchester Ave., Suite 200
Orange, CA 92668 (3)

All Parties Required to be Served have Been Served.

I certify (or declare), under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 1986, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA